Committee on the Internal Market and Consumer Protection

2011/0437(COD)

23.10.2012

AMENDMENTS
237 - 472

Draft report
Philippe Juvin
(PE492.669v01-00)

Award of concession contracts

Proposal for a directive
(COM(2011)0897 – C7-0004/2011 – 2011/0437(COD))
Amendment 237
Peter Simon

Proposal for a directive

Text proposed by the Commission

The European Parliament rejects the proposal for a directive on the award of concession contracts

Or. de

Justification

Primary law and the case-law of the Court of Justice form an objective and flexible legal framework for the award of concession contracts and make a transparent and non-discriminatory procedure obligatory. The diverse forms of concessions and administrative structures in the Member States make a uniform procedure inappropriate (subsidiarity principle) and would restrict the margins for manoeuvre available to local authorities, which were significantly enlarged by the Lisbon Treaty.

Amendment 238
Josef Weidenholzer

Proposal for a directive

Text proposed by the Commission

The European Parliament rejects the Commission proposal.

Or. de

Amendment 239
Matteo Salvini

Proposal for a directive

Text proposed by the Commission

The European Parliament rejects the
Commission proposal.

Justification

La proposta della Commissione Europea non é compatibile con il principio di sussidiarietà, poiché essa é relativa ad un settore dove non si rilevano evidenti distorsioni del mercato interno e gli obiettivi dell’azione prevista possono essere conseguiti dagli Stati Membri, sia a livello centrale, che regionale e locale. Inoltre, quello delle concessioni é un ambito non assimilabile agli altri settori economici, e vede la presenza di tradizioni giuridiche e prassi molto differenti tra gli Stati Membri. Infine, il livello di dettaglio della proposta é tale da rendere molto complessa la sua eventuale applicazione.

Amendment 240
Heide Rühle, Emilie Turunen
on behalf of the Verts/ALE Group
Birgit Collin-Langen, Hans-Peter Mayer, Sabine Verheyen, Anja Weisgerber
Mikael Gustafsson, Cornelis de Jong
on behalf of the GUE/NGL Group

Proposal for a directive

- Text proposed by the Commission

Amendment

The European Parliament rejects the Commission proposal.

Justification

The Commission proposal is useless and does not bring any added-value to the current situation. As stated in the Resolution on modernisation of public procurement adopted by a wide majority of the European Parliament in October 2011 (A7-0326/2011), any proposal for a legal act dealing with service concessions would be justified only with a view to remedying distortions in the functioning of the internal market; and since such distortions have not hitherto been identified, a legal act on service concessions is unnecessary because it is not geared to an identifiable improvement in the functioning of the internal market.

Amendment 241
Bernadette Vergnaud, Marc Tarabella
Proposal for a directive
Citation 1

Text proposed by the Commission
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53 (1), Article 62 and Article 114 thereof,

Amendment
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 14, Article 53(1), Article 62 and Article 114 thereof, and Protocol 26 thereto,

Or. fr

Justification
Takes into account the provisions relating to services of general interest and their specific features in the directive.

Amendment 242
Françoise Castex

Proposal for a directive
Citation 1 a (new)

Text proposed by the Commission
Having regard to Article 14 of the Treaty on the Functioning of the European Union and to Protocol 26 to the Treaty,

Amendment

Or. fr

Amendment 243
Françoise Castex

Proposal for a directive
Citation 1 b (new)

Text proposed by the Commission
Having regard to Article 4(2) of the Treaty on the Functioning of the European Union,

Amendment


Amendment 244
Heide Rühle

Proposal for a directive
Citation 1

Text proposed by the Commission
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53 (1), Article 62 and Article 114 thereof,

Amendment
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 14, 53 (1), Article 62 and Article 114 as well as Protocol 26 thereof,

Amendment 245
Heide Rühle

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and...
strategic services to the citizen.

Amendment 246
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.

Amendment 247
Lara Comi

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.
level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.

A general principle should be established at European level whereby the award of concessions would be open to SMEs so as to improve their access opportunities on the concession market.

Or. it

Amendment 248
Françoise Castex

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.

Amendment

(1) The absence of clear rules at Union level governing the award of concession contracts gives rise to legal uncertainty and to obstacles to the free provision of services and causes distortions in the functioning of the Internal Market. As a result, economic operators, in particular Small and Medium Enterprises (SMEs), are being deprived of their rights within the Internal Market and miss out on important business opportunities, while public authorities may not find the best use of public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.
public money so that EU citizens benefit from quality services at best prices. An adequate legal framework for the award of concessions would ensure effective and non-discriminatory access to the market to all Union economic operators and legal certainty, favouring public investments in infrastructures and strategic services to the citizen.

Amendment 249
Heide Rühle
Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to different interpretations of the principles of the Treaty by national legislators and of wide disparities among the legislations of different Member States. Such risk has...
been confirmed by the extensive case law of the Court of Justice of the European Union but which has only partially addressed certain aspects of the award of concession contracts. Hence, a uniform concretisation of the Treaty principles across all Member States and the elimination of discrepancies in their understanding following therefrom is necessary at the Union level in order to eliminate persisting distortions of the Internal Market.

Amendment 250
Sabine Verheyen, Birgit Collin-Langen, Hans-Peter Mayer, Andreas Schwab, Anja Weisgerber

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to

Amendment

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to
different interpretations of the principles of the Treaty by national legislators and of wide disparities among the legislations of different Member States. Such risk has been confirmed by the extensive case law of the Court of Justice of the European Union but which has only partially addressed certain aspects of the award of concession contracts. Hence, a uniform concretisation of the Treaty principles across all Member States and the elimination of discrepancies in their understanding following therefrom is necessary at the Union level in order to eliminate persisting distortions of the Internal Market.

Amendment 251
Mikael Gustafsson, Cornelis de Jong
Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment,

Amendment

(2) Public procurement plays a key role in the Europe 2020 strategy as one of the market-based instruments to be used to achieve a smart, sustainable and inclusive growth while ensuring the most efficient use of public funds. The award of works concessions is presently subject to basic rules of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts while the award of services concessions with a cross-border interest is subject to the principles of the Treaty, and in particular the principle of free movement of goods, freedom of establishment and freedom to provide services as well as to the principles deriving therefrom such as equal treatment,
non-discrimination, mutual recognition, proportionality and transparency. There is a risk of legal uncertainty related to different interpretations of the principles of the Treaty by national legislators and of wide disparities among the legislations of different Member States. Such risk has been confirmed by the extensive case law of the Court of Justice of the European Union but which has only partially addressed certain aspects of the award of concession contracts. Hence, a uniform concretisation of the Treaty principles across all Member States and the elimination of discrepancies in their understanding following therefrom is necessary at the Union level in order to eliminate persisting distortions of the Internal Market.

Amendment 252
Heide Rühle
Proposal for a directive
Recital 3

Text proposed by the Commission

(3) This Directive should not in any way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. Member States or public authorities should remain free to define the characteristics of the service to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives

Amendment

(3) This Directive recognises and reaffirms the right of Member States to determine the means of organisation they judge to be most appropriate for performing the works and providing the services for which they are responsible. This Directive should not in any way affect the freedom of Member States or public authorities to perform works or provide services to the public or to outsource such provision by delegating it to third parties. Member States and public authorities shall retain the right to define and specify the characteristics of the services to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public
policy objectives

Amendment 253
Othmar Karas

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) This Directive should not in any way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. Member States or public authorities should remain free to define the characteristics of the service to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives.

Amendment

(3) In accordance with the subsidiarity principle enshrined in Union law, this Directive does not in any way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. This also applies in particular to services of general interest and services of general economic interest within the meaning of Article 14 TFEU and Article 2 of Protocol (No 26) on services of general interest. The right of the Member States or public authorities to define the characteristics of the service to be provided and indicate details, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives, is guaranteed.

Justification

To underline that the directive does not interfere with the principle of administrative freedom for public authorities and does not lay down any rules for the Member States or their authorities on whether a service should be provided by the state or by external providers. It is also stressed that this principle applies in particular to sensitive areas relating to the provision of services of general interest or of general economic interest.

Amendment 254
Mikael Gustafsson, Cornelis de Jong
Proposal for a directive
Recital 3

Text proposed by the Commission

(3) This Directive should not in any way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. Member States or public authorities should remain free to define the characteristics of the service to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives.

Amendment

(3) This Directive recognises and reaffirms the right of Member States and public authorities to decide the means of administration they judge to be most appropriate for performing the works and providing the services for which they are responsible. This Directive should not in any way affect the freedom of Member States and public authorities to perform works and provide services directly to the public or to outsource such provision to third parties. Member States or public authorities shall retain the right to define and specify the characteristics of the services to be provided, including any conditions regarding the quality or price of the services as well as concerning work conditions under which the services are provided, in order to pursue their public policy objectives.

Amendment 255
Françoise Castex
Proposal for a directive
Recital 3

Text proposed by the Commission

(3) This Directive should not in any way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. Member States or public authorities should remain free to define the characteristics of the service to be provided, including any conditions regarding the quality or price of the

Amendment

(3) According to Article 4 of the Treaty on the European Union, the Directive respects national identities, inherent to their fundamental structures, political and constitutional, inclusive of regional and local self-government. According to Article 14 of the Treaty on the Functioning of the European Union and Protocol 26 on Services of General Interest, this Directive should not in any
services, in order to pursue their public policy objectives

way affect the freedom of Member States or public authorities to decide on the direct provision of works or services to the public or on the outsourcing of such provision to third parties. Member States or public authorities inclusive of the sub-state authorities should remain free to define the characteristics of the service to be provided, including any conditions regarding the quality or price of the services, in order to pursue their public policy objectives

Amendment 256
Pier Antonio Panzeri
Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This directive does not affect the freedom of public authorities to define, at national level the scope of services of general economic interest and characteristics of the service to be provided, including any conditions regarding the quality of the service, in order to pursue its public policy objectives. This Directive does not deal with the funding of services of general economic interest or with systems of aids granted by Member States, in particular in the social field, in accordance with Community rules on competition.

Amendment 257
Pier Antonio Panzeri
Proposal for a directive
Recital 3 b (new)
(3b) This Directive does not affect terms and conditions of employment, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay as well as health, safety and hygiene at work, which Member States apply in compliance with Union law nor does it affect relations between social partners, including the right to negotiate and conclude collective agreements, the right to strike and to take industrial action in accordance with national law and practices which respect Union law.

Or. en

Amendment 258
Pier Antonio Panzeri

Proposal for a directive
Recital 3 c (new)

(3c) Member States may provide that contracting authorities and contracting entities shall base the award of concessions inter alia on the criterion of the most economically advantageous tender. This criterion may refer, in addition to price or costs, to quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, environmental, social characteristics and innovative character. It may also refer to after-sales service and technical assistance, delivery date, delivery period or period of completion, the organisation, qualification and experience of the staff assigned to performing the concession in question as well as to the specific process of production or provision of the requested
works, supplies or services to the extent that it does not discriminates between economic operators

Amendment 259
Mikael Gustafsson, Cornelis de Jong
Proposal for a directive
Recital 4

Text proposed by the Commission

(4) For concessions above a certain value, it is appropriate to provide for a minimum coordination of national procedures for the award of such contracts based on principles of the Treaty so as to guarantee the opening-up of concessions to competition and adequate legal certainty. Those coordinating provisions should not go beyond what is necessary in order to achieve the aforementioned objectives. However, Member States should be allowed to complete and develop further those provisions if they find it appropriate notably to better ensure compliance with the principles above.

Or. en

Amendment 260
Evelyne Gebhardt
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national

Or. en
authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Amendment 261
Sabine Verheyen, Anja Weisgerber, Birgit Collin-Langen, Hans-Peter Mayer

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Amendment 262
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 5
(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Amendment 263
Werner Kuhn
Proposal for a directive
Recital 5

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Or. en

Or. de
Amendment 264
Heide Rühle
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Amendment

(5) In accordance with the resolutions of the European Parliament of 14.01.2004, 10.03.2004 and of 31.05.2006, the water sector should not be liberalised but modernised. The water sector should therefore not fall under the scope of this directive.

Or. en

Amendment 265
Peter Simon
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Amendment

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.
Amendment 266
Françoise Castex

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) Certain coordination provisions should also be introduced for the award of works and services concessions awarded in the water, energy, transport and postal services sectors given that national authorities may influence the behaviour of entities operating in those sectors and taking into account the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the Member States concerning the supply to, provision or operation of networks for providing the services concerned.

Amendment

(5) Specific provisions must also be introduced for the award of concessions for services of general economic interest, where objectives and particular tasks are laid down by the national authorities, who have full freedom of choice in their management and who may grant special or exclusive rights concerning the supply to, provision or operation of networks for providing the services concerned.

Or. fr

Amendment 267
Sabine Verheyen, Hans-Peter Mayer, Anja Weisgerber, Birgit Collin-Langen

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

(5a) In keeping with the European Parliament resolutions of 14 January 2004, 10 March 2004 and 31 May 2006, the water sector should not be liberalised but should be modernised. It should therefore be excluded from the scope of this Directive.

Amendment

Or. de
Justification

The wishes of the European Parliament regarding the water sector can be ascertained from its resolutions of 14.01.04, 10.03.04 and 31.05.06. Thus the European Parliament does not wish to see any liberalisation in the water sector (as in the energy, telecommunications and postal sectors, for example) but instead supports the modernisation of the water sector, with economic principles standing alongside quality and environmental standards and the necessary efficiency.

Amendment 268
Werner Kuhn

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

(5a) In keeping with the European Parliament resolutions of 14 January 2004, 10 March 2004 and 31 May 2006, the water sector should not be liberalised but should be modernised. It should therefore be excluded from the scope of this Directive.

Or. de

Amendment 269
Evelyne Gebhardt

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding
obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment 270
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Recital 6

*Text proposed by the Commission*

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain

*Amendment*

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences, or approval requirements for the provision of social services, whereby the State or a public authority establishes the conditions for the exercise of an economic activity,
agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment 271
Pier Antonio Panzeri
Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences issued for limited periods, whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.
Amendment 272
Barbara Weiler

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as tenancy contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services. The general conditions contained in both tenancy and land lease contracts are rules concerning the transfer of the rented property to the tenant, the use thereof (e.g. a description of the rented property, provisions on permissible uses of the rented property, provisions on the optimum use of the rented property such as performance indicators and environmental standards), the respective obligations of the landlord and the tenant with regard to the
maintenance of the rented property, the
duration of the lease and repossession by
the landlord of the rented property, the
rent and other costs borne by the tenant
(including penalties).

Or. de

Amendment 273
Heide Rühle

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest through which one or more contracting authorities or entities (herein after referred to as 'grantor') award the performance of works or the management of services for which they are responsible to one or more economic operators, and where the consideration for this delegation consists either in the right to execute and manage the works or provide the services which are the subject of the contract, or in that right together with payment. The execution of these works or services shall be subject to specific binding obligations defined by the grantor which are legally enforceable. By contrast, certain State acts, such as authorisations, permits or licences, whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not be regarded as concessions. The same applies to certain agreements having as their object the entitlement to offer social services or the right to conclude agreements by means of which the State or the contracting authority or entity grants an economic operator the right to exploit certain public domains or resources, such as in rental or lease contracts on single pieces of land, particularly in the area of maritime or inland port sector, or in rights of way, and
which as a rule establishes only general conditions for their use without turning the public authority into a recipient of specific works or services provided by the contracting partner.

Or. en

Justification

There is still considerable lack of clarity and thus of legal certainty in the definition of services concessions. In any case, it must be ensured that sovereign activities like licences and permits or court instructions and assignments are excluded from the concept of the concession contract. Permission procedures of member states which are based on the point that all service providers which fulfill certain statutory preconditions are permitted to provide services irrespective of their legal structure should not be deemed a service concession contract. Social services are for example in some Member States carried out by independent providers. These independent providers – and to some extent also the measures themselves – require a permit under social law. This permit should be excluded from the scope of the directive. Under the current wording, this is not clearly the case.

Amendment 274
Herbert Dorfmann

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as

Amendment

(6) Concessions for the purposes of this Directive are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, even if they are termed ‘concessions’ in some Member States, certain State acts such as qualifications, authorisations, or licences
concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

whereby the State or a public authority establishes the conditions for the exercise of an economic activity or permits an economic operator to carry out works or exercise economic activities, including activities in the form of services, should not be considered concessions within the meaning of this Directive. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Or. it

Justification

The amendment is intended to dispel all possible confusion regarding the fact that the directive, instead of applying to administrative acts or measures of whatever kind, as long as they are termed concessions, relates solely to the specific legal instrument of concession contracts. It therefore has to be made clear that even though a Member State’s domestic law might refer in such cases to concession measures, the measures in question lie outside the scope of the proposal for a directive.

Amendment 275
Wim van de Camp

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding
obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Equally, agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as public domain and private land lease contracts whereby the State or contracting authority or entity only establishes only general conditions and/or specific binding and legally enforceable obligations that relate to the use of the land without acquiring specific works or services, should not qualify as concessions. In the framework of these public domain and private land lease contracts, the following terms are to be considered as conditions and obligations that purely aim at regulating the use of the land: the use to which the public domain or resource is to be put (e.g. description and permissible use, obligations that aim at optimising the use, such as performance benchmarks or environmental standards), the obligations of the contracting parties regarding the maintenance of the public domain or resource, the fee or rent and the incidental charges to be paid by the tenant (including penalties for breach of contract).

Or. en

Justification

The intention of the Commission to exclude land lease contracts should be made more specific to enhance legal certainty and ensure a level playing field among contracting parties. The two most common instruments to contract land are public domain and private land lease contracts. Although they may establish general conditions and/or specific binding and legally enforceable conditions, they do not qualify as concessions in the sense of this Directive, since works or services are not acquired.
Amendment 276
Hans-Peter Mayer, Sabine Verheyen, Andreas Schwab, Birgit Schnieber-Jastram, Anja Weisgerber, Heide Rühle, Birgit Collin-Langen

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences, or approval requirements for the provision of social services, whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as tenancy contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services. The general conditions contained in both tenancy and land lease contracts are rules concerning the transfer of the rented property to the tenant, the use thereof (e.g. a description of the rented property, provisions on permissible uses of the rented property, provisions on the optimum use of the rented property such as performance indicators and environmental standards), the respective obligations of the landlord and the tenant with regard to the maintenance of the rented property, the duration of the lease and repossession by
the landlord of the rented property, the rent and other costs borne by the tenant, including penalties.

Or. de

Justification

'Only general conditions' must be defined in order to guarantee legal security. The definition given by the ECJ in case 241/83 should be used and applied.

Amendment 277
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer
Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services. This also applies to agreements opening up general and non-
discriminatory access to the market to all economic operators meeting the conditions established beforehand by the contracting authority, without any limits or quotas. Town planning contracts are also not concessions.

Justification

Clarification of the concept of concession. The current wording, which is explicitly restricted to approval and licences and certain agreements on the use of public domains are resources, is not sufficiently clear to exclude from the scope of the directive all procedures that do not end with an exclusive selection decision by the contracting authority.

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or

Amendment 278
Françoise Castex

Amendment

(6) Concessions may be contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. Concessions may also concern the delegation of the management of services, particularly services of general economic interest, for a fixed period of time, for a specific activity and in a defined area. These are not therefore public 'purchases', 'acquisitions' or 'public contracts'. By contrast, certain State acts such as authorisations or licences whereby the
contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

**Amendment 279**
**Marc Tarabella**

**Proposal for a directive**
**Recital 6**

*Text proposed by the Commission*

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, *certain* State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

*Amendment*

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, State acts such as authorisations, licences, *awards or similar acts*, whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.
services. specific works or services.

Or. fr

Justification

The wording used in recital 6 to define the term ‘concession’ could lead to uncertainty. Adding the words ‘awards or similar acts’ to the list of specific exclusions would resolve this problem. The word ‘certain’ is unnecessary and can be deleted.

Amendment 280
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services. Simple approvals or the right to use public goods or a public domain are
not services concessions.

Or. de

Justification

Approvals and the right to use public goods or a public domain do not constitute procurement on the market. It should therefore be made clear that they are not to be classed as service concessions and, consequently, are not covered by the scope of the directive.

Amendment 281
Cornelis de Jong

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. The same applies to certain agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as land lease contracts whereby the State or contracting authority or entity establishes only general conditions for their use without acquiring specific works or services.

Amendment

(6) Concessions are contracts for pecuniary interest concluded between one or more economic operators and one or more contracting authorities or entities and having as their object the acquisition of works or services where the consideration consists, normally, in the right to exploit the works or services that are the subject of the contract. The execution of these works or services are subject to specific binding obligations defined by the contracting authority or entity which are legally enforceable. By contrast, certain State acts such as authorisations or licences whereby the State or a public authority establishes the conditions for the exercise of an economic activity, should not qualify as concessions. Equally, agreements having as their object the right of an economic operator to exploit certain public domains or resources, such as public domain and private land lease contracts whereby the State or contracting authority or entity only establishes general conditions and/or specific binding and legally enforceable obligations that relate to the use of the land, without acquiring specific works or services, should not qualify as
concessions. In the framework of these public domain and private land lease contracts, the following terms are to be considered as conditions and obligations that purely aim at regulating the use of the land: terms concerning entry into possession by the tenant, the use to which the public domain or resource is to be put (e.g. description and permissible use, obligations that aim at optimising the use, such as performance benchmarks or environmental standards), the obligations of the contracting parties regarding the maintenance of the public domain or resource, the duration of the contract and the giving up of possession by the tenant, the fee or rent and the incidental charges to be paid by the tenant (including penalties for breach of contract).

Or. en

Amendment 282
Heide Rühle

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) Difficulties related to the interpretation of the concepts of concession and public contract have been source of continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of substantial operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded under normal operating conditions. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity relieved the contractor of any potential loss. However certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs

Amendment

(7) The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded under normal operating conditions. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity relieved the contractor of any potential loss. However certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs
services awarded. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity relieved the contractor of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs incurred by the operator for execution the work or providing the service depends on the actual demand for or the availability of the service or asset.

Amendment 283
Françoise Castex
Proposal for a directive
Recital 7

(7) Difficulties related to the interpretation of the concepts of concession and public contract have been source of continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of substantial operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded. The application of specific rules governing the award of concessions would
not be justified if the contracting authority or entity relieved the contractor of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupement of the investments and costs incurred by the operator for execution the work or providing the service depends on the actual demand for or the availability of the service or asset.

interest, the delegation of management entailed implies rigorous implementation by concessionaires of the particular tasks awarded to them, particularly the values clearly laid down in Protocol 26 annexed to the TEU and the TFEU: a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity relieved the contractor of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupement of the investments and costs incurred by the operator for execution the work or providing the service depends on the actual demand for or the availability of the service or asset.

Amendment 284
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) Difficulties related to the interpretation of the concepts of concession and public contract have been source of continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union on this subject. Therefore, the definition of concession should be clarified, in particular by referring to the concept of

Amendment

(7) The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded under normal operating conditions. The application of specific rules governing the award of concessions
**substantial operating risk.** The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an economic risk involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded. The application of specific rules governing the award of concessions would not be justified if the contracting authority or entity relieved the contractor of any potential loss, by guaranteeing a minimal revenue, equal or higher to the costs that the contractor has to incur in relation with the performance of the contract. At the same time it should be made clear that certain arrangements which are fully paid by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs incurred by the operator for execution the work or providing the service depends on the actual demand for or the availability of the service or asset.

Amendment 285
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer, Andreas Schwab

Proposal for a directive
Recital 8

*Text proposed by the Commission*

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.

*Amendment*

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive. A distinction should nevertheless be established with cases where the operating risk is limited from the outset. This does not prevent a
concession from being accepted (see the case-law of the ECJ in case WAZV Gotha (C-206/08)).

Justification

In keeping with the case-law of the ECJ in case WAZV Gotha (C-206/08), it is not appropriate to demand that an authority awarding a concession ensures stronger competition and a higher economic risk than normally exist in the sector concerned owing to the regulations governing that sector.

Amendment 286
Heide Rühle

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.

Amendment

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive. However this has to be distinguished from those cases where the operating risk for certain markets is limited from the outset, but this limited risk is fully transferred to the concessionaire, in which cases such conditions do not preclude a qualification as a concession.

Or. en

(see ECJ ruling Case C-206/08)

Amendment 287
Lara Comi
Proposal for a directive
Recital 8

Text proposed by the Commission

(8) Where sector specific regulation provides for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive.

Amendment

(8) Where sector-specific regulation provides for a guarantee not less than 50% of the value of the contract to the concessionaire on breaking even on investments and costs incurred for operating the contract, such a contract should not qualify as a concession within the meaning of this Directive.

Amendment 288
Malcolm Harbour, Edvard Kožušnik

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

(8a) An operating risk must stem from the factors which are outside the control of the parties and thus can not result from inappropriate performance of the contract by any of the parties to the contract. An operating risk may consist in either a demand risk or an availability risk, or both a demand and availability risk. Demand risk is to be understood as the risk on actual demand for the services which are the object of the contract. Availability risk is to be understood as the risk on the supply of the works or services which are the object of the contract, in particular the risk that the supply of the services will not match demand and the risk of liability for harm or damage resulting from the inadequacy of the works or services. This risk of inadequate supply, or liability, may arise from the decisions of the concessionaire about the capital investments and other investments needed in order to perform the
concession, and may lead to a risk that the insufficient supply or inadequacy of the works and services adversely affects the concessionaire's ability to make a return on investment within the duration of the concession contract.

Or. en

Justification

The definition and meaning of "availability risk" in Article 2 Paragraph 2 are not very clear. This suggested new recital is an attempt to link it to the decisions of the concessionaire as to its investments in delivering the concession (see Recital 19a (new))

Amendment 289
Andreas Schwab

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

(8a) An operating risk must stem from the factors which are outside the control of the parties and thus can not result from inappropriate performance of the contract by any of the parties to the contract. An operating risk may consist in either a demand or an availability risk or in both a demand and an availability risk. Demand risk is to be understood as the risk on actual demand for the works or services which are the object of the contract. Availability risk is to be understood as the risk on the supply of the works or services which are the object of the contract, in particular the risk that the supply of the services will not match demand and the risk of liability for harm or damage resulting from inadequacy of the works or services. It is sufficient (for the contract to be categorised as a concession) that the supplier assumes all, or at least a significant share, of the operating risk faced by the contracting authority, even if
that risk is, from the outset, very limited on account of the detailed rules of public law governing that service.

Or. en

Justification

The definition of "operating risk" should be based on the demand and availability risk in order to avoid a vague definition. This wording should furthermore take into account the ECJ rulings C-206/08 ("Eurawasser") and C-274/09 ("Stadler").

Amendment 290
Heide Rühle

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4 (1) (1) nor public undertakings are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the
Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. The increasingly diverse forms of public action made it necessary to define more clearly the notion of procurement itself. The Union rules on concessions refer to the acquisition of works or services for a consideration consisting in exploitation of those works or services. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question not requiring in all cases a transfer of ownership to contracting authorities or contracting entities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall under this Directive.

Amendment 291
Françoise Castex

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) The notion of special or exclusive rights is central to the definition of the

Amendment

(9) The notion of special or exclusive rights is central to the definition of the
scope of this Directive, since entities which are neither contracting entities pursuant to Article 4 (1) (1) nor public undertakings are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. The increasingly diverse forms of public action made it necessary to define more clearly the notion of procurement itself. The Union rules on concessions refer to the acquisition of works or services for a consideration consisting in exploitation of those works or services. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question not requiring in all
cases a transfer of ownership to contracting authorities or contracting entities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall under this Directive.

Or. fr

Amendment 292
Herbert Dorfmann

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4(1)(1) nor public undertakings are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and

Amendment

(9) The notion of special or exclusive rights is central to the definition of the scope of this Directive, since entities which are neither contracting entities pursuant to Article 4(1)(1) nor public undertakings are subject to its provisions only to the extent that they exercise one of the activities covered on the basis of such rights. It is therefore appropriate to clarify that rights which have been granted by means of a procedure based on objective criteria, notably pursuant to Union legislation, and for which adequate publicity has been ensured do not constitute special or exclusive rights for the purposes of this Directive. This legislation should include Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and
the improvement of quality of service, Directive 94/22/EC of the European Parliament and of the Council of 20 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons and Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70. The increasingly diverse forms of public action made it necessary to define more clearly the notion of procurement itself. The Union rules on concessions refer to the acquisition of works or services for a consideration consisting in exploitation of those works or services. The notion of acquisition should be understood broadly in the sense of obtaining the benefits of the works or services in question not requiring in all cases a transfer of ownership to contracting authorities or contracting entities. Furthermore, the mere financing of an activity, which is frequently linked to the obligation to reimburse the amounts received where they are not used for the purposes intended, does not usually fall under this Directive.

Avoiding all possibility of misunderstanding, the amendment seeks to reproduce the essential idea set out in Directive 2004/17/EC that ‘rights granted by a Member State in any form, including by way of acts of concession, to a limited number of undertakings on the basis of objective, proportionate and non-discriminatory criteria ... [should not] be considered special or exclusive rights’.

Or. it
Amendment 293
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all concessions concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.

Amendment

deleted

Justification

'Project' is not sufficiently clear. A precise definition of the value of a concession does not solve the problem, since in practice it is often not possible to say which actions are still covered. There is therefore a risk that using the concept of 'project' will regularly lead to the value of a concession being put too high.

Amendment 294
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Recital 10
(10) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all concessions concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.

Or. de

Justification

Deletion owing to the deletion of the concept of 'single project' in Article 6(2), since lumping contracts together leads to problems.

Amendment 295
Heide Rühle

Proposal for a directive
Recital 10

(10) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all concessions concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive.

(10) This directive should only apply to concession contracts above a certain threshold. Consequently, the method of calculating the estimated value of a concession needs to be defined, and should be identical for works and service concessions, as most contracts are mixed.
Directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.

Amendment 296
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Recital 10

Text proposed by the Commission

(10) It has also proven necessary to clarify what should be understood as a single procurement, with the effect that the aggregate value of all concessions concluded for the purpose of this procurement has to be taken into account with regard to the thresholds of this Directive, and that the procurement should be advertised as a whole, possibly split into lots. The concept of single procurement encompasses all supplies, works and services needed to carry out a particular project. Indications for the existence of one single project can for instance consist in overall prior planning and conception by the contracting authority, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.

Or. en

Amendment

(10) While calculating the estimated value of a concession, contracting authorities and entities should take account of the total value of the concessions which are part of one single concession project from the point of view of a potential concessionaire. An indication of the existence of a single project consist in the fact that the different elements fulfil a single economic and technical function, require similar types of investment by the concessionaire, and require a concession of a similar start date and duration.

Or. en
Justification

Recital 10 has been re-drafted so as to better reflect the specificity of concessions. In particular, it needs to be made more relevant from the point of view of the concessionnaire. This also contains an explanation of the concept "one single project", which previously featured in Article 6. A single overall project from the viewpoint of the authority might include different types of concessions attracting different market participants, and be justifiably awarded as separate concessions.

Amendment 297
Heide Rühle

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) To ensure a real opening up of the market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Amendment

(11) Entities covered by this directive should be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Or. en

Amendment 298
Peter Simon

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) To ensure a real opening up of the

Amendment

(11) To ensure a real opening up of the
market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) To ensure a real opening up of the market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Amendment 299
Françoise Castex

Amendment

(11) To ensure a real opening up of the market and a fair balance in the application of concession award rules in the energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.
Amendment 300
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) To ensure a real opening up of the market and a fair balance in the application of concession award rules in the water, energy, transport and postal services sectors it is necessary for the entities covered to be identified on a basis other than their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Amendment

(11) It should be ensured that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is granted. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Amendment 301
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

(11a) The entities covered by the Directive should not be identified on the basis of their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is not prejudiced. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.

Amendment

(11a) The entities covered by the Directive should not be identified on the basis of their legal status. It should be ensured, therefore, that the equal treatment of contracting entities operating in the public sector and those operating in the private sector is granted. It is also necessary to ensure, in keeping with Article 345 of the Treaty, that the rules governing the system of property ownership in Member States are not prejudiced.
Amendment 302
Mikael Gustafsson, Cornelis de Jong
Proposal for a directive
Recital 11 a (new)

Text proposed by the Commission

(11a) In accordance with Article 14 TFEU in association with Protocol No 26, national, regional or local competent authorities shall have wide discretion in deciding whether to award contracts for services of general interest.

Amendment

(11a) In accordance with Article 14 TFEU in association with Protocol No 26, national, regional or local competent authorities shall have wide discretion in deciding whether to award contracts for services of general interest.

Amendment 303
Cornelis de Jong
Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

(12a) In accordance with the relevant case law of the Court of Justice of the European Union, whereas gambling activities are considered economic activities of a particular nature which do not directly fall under the application of the Treaty rules, whereas Member States have free policy choices of exclusive concessions, single or multiple, the inclusion of gambling within the scope of this Directive would contribute to creating legal uncertainty. It is therefore appropriate to exclude gambling from the scope of this Directive.

Amendment

(12a) In accordance with the relevant case law of the Court of Justice of the European Union, whereas gambling activities are considered economic activities of a particular nature which do not directly fall under the application of the Treaty rules, whereas Member States have free policy choices of exclusive concessions, single or multiple, the inclusion of gambling within the scope of this Directive would contribute to creating legal uncertainty. It is therefore appropriate to exclude gambling from the scope of this Directive.
(13) It is appropriate to exclude from the scope of this Directive certain services concessions awarded to an economic operator which is itself a contracting authority or a contracting entity on the basis of an exclusive right which that operator enjoys under published national law or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions as defined in article 8 (1) should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.

(13) It is appropriate to exclude from the scope of this Directive certain services concessions awarded to an economic operator on the basis of an exclusive right which that operator enjoys under published national law, regulation or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions concerning the management of network infrastructure relating to the activities set out in Annex III should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.

Or. en
operator which is itself a contracting authority or a contracting entity on the basis of an exclusive right which that operator enjoys under published national law or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions as defined in article 8 (1) should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.

operator which enjoys an exclusive right under published national law, regulation or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation, since such exclusive right makes it impossible to follow a competitive procedure for the award. The concessions referred to are those concerning the management of network infrastructure related to the activities set out in Annex III, or those concerning an activity set out in Annex III which, when this Directive is adopted, is the subject of a nationally regulated tariff laid down in law or regulation. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions concerning the management of network infrastructure related to the activities set out in Annex III, or those concerning an activity set out in Annex III which, when this Directive is adopted, is the subject of a nationally regulated tariff, should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.

Or. fr

Justification

Clarification of Amendment 9 (Recital 13) of the Rapporteur in connection with the redrafting of Article 8(1) of the proposal for a directive (Amendment 69).

Amendment 306
Mikael Gustafsson

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) It is appropriate to exclude from the

Amendment

(13) It is appropriate to exclude from the
Proposal for a directive
Recital 13

Text proposed by the Commission

(13) It is appropriate to exclude from the scope of this Directive certain services concessions awarded to an economic operator which is itself a contracting authority or a contracting entity on the basis of an exclusive right which that operator enjoys under published national law or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it impossible to follow a competitive procedure for the award. The concessions referred to are those concerning the management of network infrastructure relating to the activities set out in Annex III or those concerning an activity subject to a tariff regulated at national level or those where socio-economic interest can be deemed more important.

Amendment

(13) It is appropriate to exclude from the scope of this Directive certain services concessions awarded to an economic operator which enjoys an exclusive right under published national law, regulation or administrative act and which has been granted in accordance with the Treaty and Union sectoral legislation, since such exclusive right makes it impossible to follow a competitive procedure for the award. The concessions referred to are those concerning the management of public-domain maritime concessions for recreational tourist purposes, and which has been granted in accordance with the Treaty and Union sectoral legislation concerning the management of networks infrastructure related to the activities set out in annex III, since such exclusive right makes it
impossible to follow a competitive procedure for the award. By way of derogation and without prejudice to the legal consequences of the general exclusion from the scope of this Directive, concessions as defined in article 8(1) should be subject to the obligation to publish a concession award notice in view of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.
provided for in sectoral legislation. of ensuring basic transparency unless the conditions of such transparency are provided for in sectoral legislation.

Or. it

Amendment 309
Heide Rühle
Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

(13a) In line with Article 14 and Protocol 26 TFEU, Member States and local and regional authorities enjoy full freedom to carry out public service tasks using their own internal resources. They may carry out public service tasks in cooperation with other public authorities or groups of public authorities, via contractual or institutional task-sharing, in accordance with the internal organisation of the Member States. These types of cooperation do not fall within the scope of Union legislation on public procurement and concessions. Union law does not require public authorities to use a particular legal form in order to jointly undertake their public service tasks. The transfer of competences between public authorities is an issue of internal organisation and therefore does not fall under the scope of this legislation.

Or. en

(See Opinion of Committee of Regions on the Award of Concession Contracts (ECOS-V-030) July 2012)

Amendment 310
Marc Tarabella
Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

(13a) This Directive is without prejudice to the Member States’ power to award, define and organise the provision of a public service task in accordance with Protocol 29 annexed to the Treaties on the system of public broadcasting in the Member States.

Amendment

(13a) It is appropriate to exclude from the scope of this Directive concessions relating to gambling activities involving a financial risk through investing a sum of money in games of chance (lotteries, betting), run at national level by a single body, which, in accordance with the Treaties, has been awarded exclusive rights by one or more Member States pursuant to applicable and published national laws, regulations or administrative provisions. That exclusion is justified by the granting of exclusive rights to a single body at national level, making a competitive procedure inapplicable, as well as by the need to

Or. fr

Justification

A new recital should be added making an explicit reference to the Amsterdam Protocol as an instrument of primary EU law. This amendment would be along the same lines as the reference to the Amsterdam Protocol in the Commission’s interpretative communication on concessions under Community law.

Amendment 311
Philippe Juvin
retain the possibility for Member States to regulate the gambling sector at national level in view of their obligations in terms of protecting public and social order.

Or. fr

Justification

New recital clarifying the exclusion of a part of the gambling sector (see Rapporteur’s AM 75). The granting of exclusive rights makes any competitive procedure inapplicable. Member States must also retain some flexibility in this sensitive sector (protection of public and social order). A state’s capacity for action in this regard must not be diminished by rules that are inappropriate to the sector (e.g. cessation of operation of a game of chance).

Amendment 312
Heide Rühle

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) It is appropriate to exclude certain service and works concessions awarded to an undertakings affiliated to contracting entities, having as its principal activity the provision of such services or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their

Amendment

deleted
turnover from the market and above which they would lose the possibility of being awarded concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

Amendment 313
Cristian Silviu Bușoi

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) It is appropriate to exclude certain service and works concessions awarded to an undertaking affiliated to a contracting entity, having as its principal activity the provision of such services or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of

Amendment

(14) It is appropriate to exclude certain service and works concessions awarded to undertakings affiliated to contracting entities which are not contracting authorities, having as their principal activity the provision of such services or works to the group of which they are part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities which are not contracting authorities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded concessions without calls for competition, the composition of joint ventures and the
which they are composed.  

stability of links between those joint ventures and the contracting entities of which they are composed.

Amendment 314  
Philippe Juvin

Proposal for a directive  
Recital 14

Text proposed by the Commission

(14) It is appropriate to exclude certain service and works concessions awarded to an undertakings affiliated to contracting entities, having as its principal activity the provision of such services or works to the group of which it is part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

Amendment

(14) It is appropriate to exclude certain service and works concessions awarded to undertakings affiliated to contracting entities, with or without private participation, and having as their principal activity the provision of such services or works to the group of which they are part, rather than offering them on the market. It is also appropriate to exclude certain service and works concessions awarded by a contracting entity to a joint venture which is formed by a number of contracting entities for the purpose of carrying out activities covered by this Directive and of which that entity is part. However, it is appropriate to ensure that this exclusion does not give rise to distortions of competition to the benefit of the undertakings or joint ventures that are affiliated with the contracting entities; it is appropriate to provide a suitable set of rules, in particular as regards the maximum limits within which the undertakings may obtain a part of their turnover from the market and above which they would lose the possibility of being awarded concessions without calls for competition, the composition of joint ventures and the stability of links between those joint ventures and the contracting entities of which they are composed.

Or. fr
Justification

Clarification of Article 11 on affiliated undertakings. In the context of this article, private participation in affiliated undertakings is authorised, as opposed to Article 15 on public-public cooperation, where no participation in the legal person controlled by the contracting authority or entity is possible.

Amendment 315
Andreas Schwab, Hans-Peter Mayer, Jorgo Chatzimarkakis

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

(15a) On the other hand, service contracts in the fields of civil protection, emergency response and everyday hazard prevention should be excluded from the scope of the Directive. These fields include, in particular, emergency rescue work, which forms part of everyday hazard prevention and should be defined as separate from ambulance services. In order to ensure successful civil protection and emergency response as part of everyday hazard prevention in the interests of the general public, it should be sufficient to apply the principles of primary law.

Or. de

Amendment 316
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award rules. The relevant case-law of the Court of Justice

Amendment

deleted
of the European Union is interpreted differently between Member States and even between contracting authorities or certain contracting entities. It is therefore necessary to clarify in what cases concessions concluded between such authorities are not subject to the application of public concession award rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (1) does not as such rule out the application of concession award rules. However, the application of concession award rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Concessions awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of the rules if the conditions set out in this Directive are fulfilled. This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.

Amendment 317

Heide Rühle

Proposal for a directive

Recital 17
(17) **There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award rules.** The relevant case-law of the Court of Justice of the European Union **is interpreted differently between Member States and even between contracting authorities or certain contracting entities. It is therefore necessary to clarify in what cases concessions concluded between such authorities are not subject to the application of public concession award rules.** Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) does not as such rule out the application of concession award rules. However, the application of concession award rules **should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Concessions awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of this Directive if the conditions are fulfilled.**

(17) **This Directive is based on the relevant case-law of the Court of Justice of the European Union. It clarifies in line with this case-law under which conditions the award of concessions concluded between public authorities is not subject to the scope of this Directive.** Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) does not as such rule out the application of concession award rules. However, the application of concession award rules **must not interfere with the right of public authorities to decide how to organise the way they carry out their public service tasks. The award of concessions to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of this Directive if the conditions are fulfilled.**
(17) There is considerable legal uncertainty as to how far cooperation between public authorities should be covered by concession award rules. The relevant case-law of the Court of Justice of the European Union is interpreted differently between Member States and even between contracting authorities or certain contracting entities. It is therefore necessary to clarify in what cases concessions concluded between such authorities are not subject to the application of public concession award rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice. The sole fact that both parties to an agreement are themselves contracting authorities or contracting entities under Art. 4 (1) (1) does not as such rule out the application of concession award rules. However, the application of concession award rules should not interfere with the freedom of public authorities to decide how to organise the way they carry out their public service tasks. Concessions awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities or entities should therefore be exempted from the application of the rules if the conditions set out in this Directive are fulfilled. This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition.

(17) There is considerable legal uncertainty as to how far cooperation between contracting authorities – whether public authorities or bodies governed by public law, some of which have non-profit private participation engaged in meeting needs in the general interest not having an industrial or commercial character in accordance with Article 6(a) of this Directive – should be covered by concession award rules. The case-law of the Court of Justice of the European Union applicable to cooperation between public authorities is interpreted differently between Member States and even between contracting authorities, including as to the conditions for its extensive and proportionate application to cooperation between bodies governed by public law, which, unlike public authorities, may have non-profit private participation in accordance with the legislation in force in the Member States, and with reference to the concept of social enterprise set out in the Communication from the Commission of 25 October 2011 entitled ‘Social Business Initiative’. It is therefore necessary to clarify in what cases concessions concluded between contracting authorities, public authorities and bodies governed by public law are not subject to the application of public concession award rules. Such clarification should be guided by the principles set out in the relevant case-law of the Court of Justice on cooperation between public authorities and on their extensive and proportionate application to cooperation between bodies governed by public law, whose non-profit status is laid down in Article 4(1), point 1 of this Directive. The
sole fact that both parties to an agreement are themselves contracting authorities does not as such rule out the application of concession award rules. The application of these rules must not interfere with the right of public authorities to decide freely how to organise the way they carry out their public service tasks. Contracts awarded to controlled entities or cooperation for the joint execution of the public service tasks of the participating contracting authorities should therefore be exempted from the application of the rules if the conditions set out in this Directive are fulfilled.

Concessions granted to controlled entities and cooperation through the pooling of the resources required to perform public service tasks and for the joint execution of the public service tasks of participating contracting authorities in the context of the organisation and legislation of Member States shall not be subject to concession award rules if the conditions set out in this Directive are fulfilled. Those conditions should, in particular, take into account the definition of a body governed by public law and the concept of social business, i.e. a business which may contain socially beneficial non-profit private participation governed by the Member States’ legislation. Similarly, transfers of powers relating to public service tasks involving a global transfer of responsibility between local public authorities, or between local public authorities and groups composed exclusively of local public authorities, as part of the internal organisation of Member States, should be exempted from the rules laid down in this Directive. This Directive should aim to ensure that any exempted public-public cooperation does not cause a distortion of competition in relation to private economic operators. Neither should the participation of a contracting authority as a tenderer in a procedure for the award of a public contract cause any distortion of competition. To achieve this, the
conditions for the exclusion of contracts from the scope of this Directive should be subject to a strict interpretation. If any of the cumulative conditions for exclusion from the scope is no longer fulfilled during the term of a contract or cooperation that has been excluded from the procurement rules, that ongoing contract or cooperation must be opened to competition through regular procurement procedures.

Amendment 319
Andreas Schwab

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission
(17a) The duration of the concession should be limited so that market foreclosure is avoided and there is no long-term prevention of competition.

Amendment

Or. de

Amendment 320
Heide Rühle

Proposal for a directive
Recital 18

(18) In order to ensure adequate advertisement of works and services concessions above a certain value awarded by contracting entities and by the contracting authorities, the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the

Text proposed by the Commission

Amendment

(18) In order to ensure adequate advertisement of works and services concessions above a certain threshold, the award of such contracts should be preceded by the compulsory publication of a concession notice in the Official Journal of the European Union.
European Union. **The thresholds should reflect the clear cross-border interest of concessions to economic operators located in other Member States. To calculate the value of a services concession, account must be taken of the estimated value of all services to be provided by the concessionaire from the point of view of a potential tenderer.**

**Or. en**

**Amendment 321**  
Heide Rühle  

**Proposal for a directive**  
Recital 19  

**Text proposed by the Commission**  

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in **very exceptional circumstances**. **This exception should** be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. **Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.**

**Amendment**  

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in **clearly defined areas and** be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession or where the **subject of the concession concerns specific services with a minimal cross-border impact.**

**Or. en**

**Amendment 322**  
Malcolm Harbour, Edvard Kožušnik
Proposal for a directive
Recital 19

Text proposed by the Commission

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Amendment

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure.

Or. en

Justification

The deletion of the final segment corresponds to the fact that this wording is rather vague and not found in the corresponding clause in the main Directive.

Amendment 323
Mikael Gustafsson

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication

Amendment

(19) Awarding concessions without prior publication should be allowed in cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator
would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Amendment 324
Paolo Bartolozzi, Lara Comi

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Amendment

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession, or when the concession concerns social services and other special services of socio-economic importance, or when the interests of citizens, environment and climate are deemed more important, or when the concession concerns services with minimal cross-border impact.

Or. en

Or. it
Amendment 325
Erminia Mazzoni, Roberta Angelilli

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Amendment

(19) In view of the detrimental effects on competition, awarding concessions without prior publication should only be permitted in very exceptional circumstances. This exception should be limited to cases where it is clear from the outset that a publication would not trigger more competition, notably because there is objectively only one economic operator who can perform the concession, as is the case with owners of seaside businesses set up on property under concession. Only situations of objective exclusivity can justify the award of a concession without publication to an economic operator, where the situation of exclusivity has not been created by the contracting authority or contracting entity itself in view of the future award procedure, and where there are no adequate substitutes, the availability of which should be assessed thoroughly.

Or. it

Amendment 326
Evelyne Gebhardt

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) A review of so-called prioritary and non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a

Amendment

deleted

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limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.

Amendment 327
Heide Rühle
Proposal for a directive
Recital 20

Text proposed by the Commission

(20) A review of so-called prioritary and non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.

Amendment 328
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer
Proposal for a directive
Recital 20

Text proposed by the Commission

(20) A review of so-called prioritary and non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water
distribution services), which both showed a potential for cross-border trade.

Justification

The fundamental differentiation between A and B services in procurement law must be retained. Social, cultural and health services are of little or no relevance to the internal market. Given the particular hygiene and environmental requirements, the water sector must also be dealt with individually. Water services should therefore be excluded from the scope of the directive in Keeping with Article 17 of Directive 2004/18/EC.

Amendment 329
Peter Simon

Proposal for a directive
Recital 20

Text proposed by the Commission Amendment

(20) A review of so-called prioritary and deleted non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.

Or. de

Amendment 330
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Recital 20

Text proposed by the Commission Amendment

(20) A review of so-called prioritary and deleted non-prioritary services (‘A’ and ‘B’
services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.

Justification

Privileged treatment for B services must be maintained. Social and health services are of little relevance to the internal market; as a rule they are provided locally. Since water is a vital necessity, it is necessary to act sensitively and take account of environmental and hygiene aspects. Water services should therefore be excluded from the scope of the concessions Directive in keeping with Article 17 of Directive 2004/18/EC.

Amendment 331
Werner Kuhn

Proposal for a directive
Recital 20

Text proposed by the Commission
(20) A review of so-called prioritary and non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.

Amendment 332
Malcolm Harbour, Edvard Kožušnik
Proposal for a directive
Recital 20

Text proposed by the Commission

(20) A review of so-called prioritary and non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services (such as catering and water distribution services), which both showed a potential for cross-border trade.

Amendment

(20) A review of so-called prioritary and non-prioritary services (‘A’ and ‘B’ services) by the Commission has shown that it is not justified to restrict the full application of procurement law to a limited group of services. As a result, this Directive should apply to a number of services, which show a potential for cross-border trade.

Or. en

Justification

The exact cross section of services has not yet been agreed and is part of forthcoming negotiations.

Amendment 333
Barbara Weiler

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission

(20a) So-called services to the person should be excluded from the full application of the Directive, since they have a limited cross-border dimension (e.g. in the social, educational and health field, including rescue services). These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A significantly reduced, light regime will therefore apply, with only two transparency requirements.

Amendment

(20a) So-called services to the person should be excluded from the full application of the Directive, since they have a limited cross-border dimension (e.g. in the social, educational and health field, including rescue services). These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A significantly reduced, light regime will therefore apply, with only two transparency requirements.

Or. de
(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules, it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility,
availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

Amendment 335
Barbara Weiler
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

Amendment

(21) A specific regime is established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.
contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

Amendment 336
Philippe Juvin

Proposal for a directive
Recital 21

Text proposed by the Commission
(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place

Amendment
(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a concession award notice for any concession with a value equal to or greater than the thresholds established in this Directive is an adequate way to ensure compliance with the principle of transparency while allowing the grantor to take into account the specificities of the services in question. Member States should ensure that the grantor may take into account the need to
appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

ensure innovation and, in accordance with Protocol 26 to the Treaty on the Functioning of the European Union, a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of users’ rights.

Justification

Brings the text into line with the amendments proposed in the draft report (removal of the intermediate thresholds so that the only possible threshold remaining is that of EUR 5 million).

Amendment 337
Peter Simon

Proposal for a directive
Recital 21

Text proposed by the Commission

(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A
specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

Amendment 338
Malcolm Harbour, Edvard Kožušnik
Proposal for a directive
Recital 21

Text proposed by the Commission

(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border

Amendment

(21) In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border
dimension, namely the so-called services to the person such as certain social, health and educational services. These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring compliance with the principles of transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure quality, continuity, accessibility, availability and comprehensiveness of the services, the specific needs of different categories of users, the involvement and empowerment of users and innovation.

**Justification**

*The scope of lighter social and other services regime needs to be broadened.*
(21) **In the light of the results of the evaluation conducted by the Commission on the reform of public procurement rules it is appropriate to exclude from the full application of this Directive only those services which have a limited cross-border dimension, namely the so-called services to the person such as certain social, health and educational services.** These services are provided within a particular context that varies widely amongst Member States, due to different cultural traditions. A specific regime should therefore be established for concession for these services which takes into account the fact that they are newly regulated. An obligation to publish a prior information notice and a concession award notice of any concession with a value equal to or greater than thresholds established in this Directive is an adequate way to provide information on business opportunities to potential tenderers as well as on the number and type of contracts awarded to all interested parties. Furthermore, Member States should put in place appropriate measures with reference to the award of concession contracts for these services aimed at ensuring transparency and equal treatment of economic operators while allowing contracting authorities and contracting entities to take into account the specificities of the services in question. Member States should ensure that contracting authorities and contracting entities may take into account the need to ensure innovation, quality, continuity, accessibility, availability and comprehensiveness of the services, equal treatment, equality between women and men, minimal climate-impact, the specific needs of different categories of users, the involvement and empowerment of users and innovation.
categories of users, the involvement and empowerment of users and innovation.

Amendment 340
Philippe Juvin

Proposal for a directive
Recital 21 a (new)

Text proposed by the Commission

(21a) This Directive is without prejudice to the freedom of national, regional and local authorities, in compliance with the Treaties, to define services of general economic interest. It is also without prejudice to the power of national, regional and local authorities to provide, commission and finance services of general economic interest in accordance with Article 14 of the Treaty on the Functioning of the European Union and Protocol 26 annexed to that Treaty.

Justification

Reminder of the freedom of national, regional and local authorities to define services of general economic interest and to provide, commission and finance services of general economic interest in accordance with the Treaties.

Amendment 341
Heide Rühle

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) Given the importance of the cultural context and the sensitivity of these

(22) Given the importance of the cultural context and the sensitivity of these
services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection Committee. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

 Amendment 342
 Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

 Proposal for a directive
 Recital 22

 Text proposed by the Commission

 (22) Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the

 Amendment

 (22) Given the importance of the cultural context and the sensitivity of these services, Member States are given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the
European Union's Social Protection Committee. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination. European Union's Social Protection Committee. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, for example through the mere financing of such services or by granting licences or authorisations to or concluding agreements with all economic operators meeting the conditions established beforehand by the contracting authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Justification

Clarification that social services need not be organised only through the granting of licences or authorisations but may also be organised through the conclusion of agreements, so that they are open to all economic operators meeting the conditions established beforehand.

Amendment 343
Françoise Castex

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) Given the importance of the cultural context and the sensitivity of these services, Member States should be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union's Social Protection

Amendment

(22) Given the importance of the cultural context and the sensitivity of these services, Member States shall be given wide discretion to organise the choice of the service providers in the way they consider most appropriate. The rules of this Directive do not prevent Member States to apply specific quality criteria for the choice of service providers, such as the criteria set out in the voluntary European Quality Framework for Social Services of the European Union’s Social Protection
Committee. Member States and/or public authorities remain free to provide these services themselves or to organise social services in a way that does not entail the conclusion of concessions, for example through the mere financing of such services or by granting licences or authorisations to all economic operators meeting the conditions established beforehand by the contracting authority or contracting entity, without any limits or quotas, provided such system ensures sufficient advertising and complies with the principles of transparency and non-discrimination.

Amendment 344
Sirpa Pietikäinen

Proposal for a directive
Recital 22 a (new)

Text proposed by the Commission

(22 a) Services of general economic interest (SGEI), as laid down in Article 14 and Article 106 TFEU, are often profit-making services, but they are primarily of universal interest and the Member States have therefore imposed special public service obligations on them. The SGEI are considered essential by the authorities, even though the market might not offer sufficient incentives to provide them. Fulfilling a public service requirement may involve special or exclusive rights and special funding arrangements. SGEI services are not and cannot be satisfactorily provided by the market under conditions such as price, objective quality characteristics, continuity and access to the service, consistent with the public interest, as defined by the Member State. This
Proposal for a directive
Recital 22 a (new)

**Text proposed by the Commission**

(22a) The procedure for awarding concession contracts should comprise several stages, including the publication of a concession notice allowing the grantor wishing to award a concession to make known its intention; the presentation by interested economic operators of their application in response to that notice; verification of the conditions of participation for candidates; the submission of a tender by the candidates; the grantor's right to negotiate with the tenderer on the basis of objective award criteria; the decision on the award by the grantor of the concession contract to the concessionaire and the publication of an award notice. Intermediate stages must be possible, including the selection of certain candidates authorised to submit a tender and the sending of an invitation to tender to the candidates thus selected. The grantor should also be able to approach economic operators who have not responded to the concession notice. In addition, and subject to compliance with the principles of transparency and non-discrimination, it must be possible to reverse the order of certain stages, including, for example, analysing submitted tenders before verifying compliance with the selection criteria. Subject to compliance with the provisions of this Directive, the grantor should be...
allowed considerable flexibility to define the procedure leading to the choice of concessionaire, the only two mandatory stages being the publication of a concession notice at the beginning of the procedure, except where this is not required under this Directive, and the publication of an award notice at the end of the procedure. This freedom should be balanced against a requirement for transparency and equal treatment of candidates and tenderers.

Justification

Clarification of Amendment 18 of the Rapporteur regarding the legal framework within which the order of the stages may be changed. The grantor has a large degree of flexibility in terms of the organisation of the procedure. However, that freedom must not be exercised to the detriment of the transparency of the procedure or the principle of non-discrimination between candidates/tenderers.

Amendment 346
Françoise Castex

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) In order to make it possible for all interested operators to submit applications
and tenders, contracting authorities and contracting entities should be obliged to respect a minimum time limit for the receipt of such applications.

Amendment

(23) In order to make it possible for all interested operators to submit applications, the grantor should be obliged to respect a minimum time limit for the receipt of such applications.

Amendment 347
Heide Rühle
Proposal for a directive
Recital 24

Text proposed by the Commission

(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should relate exclusively to the technical, financial and economic capacity of operators, should be announced in the concession notice and cannot preclude an economic operator from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the contracting authority or entity that it will have at its disposal the necessary resources.

Amendment 348
Françoise Castex

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises.
enterprises. Therefore, it is appropriate to provide that the selection criteria should relate exclusively to the technical, financial and economic capacity of operators, should be announced in the concession notice and cannot preclude an economic operator from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the contracting authority or entity that it will have at its disposal the necessary resources.

Amendment 349
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 24

*Text proposed by the Commission*

(24) The choice and application of proportional, non-discriminatory and fair selection criteria to economic operators is crucial for their effective access to the economic opportunities related to concessions. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should relate exclusively to the technical, financial and economic capacity of operators, should be announced in the concession notice and cannot preclude an economic operator from relying on the capacities of other entities, regardless of

*Amendment*

(24) The choice and application of proportional, non-discriminatory and fair selection criteria is important. In particular, the possibility for a candidate to rely on the capacities of other entities can be decisive to enable the participation of small and medium sized enterprises. Therefore, it is appropriate to provide that the selection criteria should be clearly defined, should be announced in the concession notice and cannot preclude a candidate from relying on the capacities of other entities, regardless of the legal nature of its links with those entities, if the latter proves to the grantor that it will have at its disposal the necessary resources.
the legal nature of its links with those entities, if the latter proves to the
contracting authority or entity that it will have at its disposal the necessary resources.

Amendment 350
Heide Rühle
Proposal for a directive
Recital 25

Text proposed by the Commission
(25) In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all potential tenderers, be related to the subject matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. In order to comply with these standards while improving legal certainty, Member States may provide for the use of the criterion of the most economically advantageous tender.

Amendment
(25) In order to ensure transparency and equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all tenderers, be linked to the subject matter of the contract and not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should be accompanied by minimum requirements that allow the information provided by the tenderers to be effectively verified.

Amendment 351
Pablo Arias Echeverría
Proposal for a directive
Recital 25

Text proposed by the Commission
(25) In order to ensure transparency and

Amendment
(25) In order to ensure transparency and
equal treatment, criteria for the award of concessions should always comply with some general standards. These should be disclosed in advance to all potential tenderers, be related to the subject matter of the contract and should not offer to the contracting authority or contracting entity an unrestricted freedom of choice. They should ensure the possibility of effective competition and be accompanied by requirements that allow the information provided by the tenderers to be effectively verified. In order to comply with these standards while improving legal certainty, Member States may provide for the use of the criterion of the most economically advantageous tender.

Amendment 352
Mikael Gustafsson, Regina Bastos

Proposal for a directive
Recital 25 a (new)

Text proposed by the Commission

(25a) In order to ensure that women and men have equal access to the labour market, the grantor should also be able to include characteristics relating to promoting gender equality.

Amendment

Or. en

Amendment 353
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 25 b (new)

Text proposed by the Commission

(25b) In order to better integrate social considerations in the award of
concessions, the grantor should also be able to include characteristics relating to working conditions among the award criteria. Those characteristics shall aim to protect the health of the staff involved in the production process or to promote the social integration of disadvantaged persons or members of vulnerable groups among the persons responsible for performing the contract, including accessibility for disadvantaged groups, such as the young, long-term unemployed, people with migration backgrounds and persons with disabilities. In this case, the award criteria should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services[1], in such a way as not to discriminate directly or indirectly against economic operators from other Member States. The grantor should also be allowed to use as award criteria the organisation, qualifications and experience of the staff assigned to the performance of the concession contract, as they may affect the quality of provision and, as a result, the economic value of the tender.


Or. en

Amendment 354
Heide Rühle

Proposal for a directive
Recital 26

Text proposed by the Commission

(26) Where contracting authorities and contracting entities choose to award a concession to the most economically advantageous tender, they should

deleted
determine the economic and quality criteria on the basis of which they assess the tenders in order to identify which one offers the best value for money. The determination of those criteria depends on the object of the concession since they should allow the level of performance offered by each tender to be assessed in the light of the subject-matter of the concession, as defined in the technical specifications and the value for money of each tender to be measured.

Amendment 355
Heide Rühle

Proposal for a directive
Recital 28

Text proposed by the Commission
Amendment

(28) The technical specifications drawn up by contracting authorities and contracting entities need to allow concession award to be opened up to competition. To that end, it must be possible to submit tenders that reflect the diversity of technical solutions so as to obtain a sufficient level of competition. Consequently, technical specifications should be drafted in such a way to avoid artificially narrowing down competition through requirements that favour a specific economic operator by mirroring key characteristics of the supplies, services or works habitually offered by that economic operator. Drawing up the technical specifications in terms of functional and performance requirements generally allows this objective to be achieved in the best way possible and favours innovation. Where reference is made to a European standard or, in the absence thereof, to a national standard, tenders based on equivalent arrangements
should be considered by contracting authorities or contracting entities. To demonstrate equivalence, tenderers can be required to provide third-party verified evidence; however, other appropriate means of proof such as a technical dossier of the manufacturer should also be allowed where the economic operator concerned has no access to such certificates or test reports, or no possibility of obtaining them within the relevant time limits.

Amendment 356
Marc Tarabella

Proposal for a directive
Recital 28 a (new)

Text proposed by the Commission

(28a) Technical specifications and concession award criteria play distinct roles in the process of awarding concessions, but the specifications and criteria are similar in substance. By means of the technical specifications, contracting authorities and entities lay down conditions governing the qualities required to take part. The ability to meet the technical specifications is a prerequisite for consideration as a candidate for the award of a concession contract and only works, supplies and services which comply with the specifications should therefore be considered. In addition, the award criteria enable contracting authorities and entities to compare the advantages of various combinations of criteria. Every tender should be assessed according to each criterion, but the ability to satisfy all the award criteria is not a necessary condition for consideration as a candidate for the award of a concession contract. Finally,
the conditions governing the performance of the concession should be included in the contract in order to show how it should be implemented.

Amendment 357
Heide Rühle
Proposal for a directive
Recital 29

Text proposed by the Commission
(29) [...] Amendment
deleted

Or. fr

Amendment 358
Evelyne Gebhardt
Proposal for a directive
Recital 29

Text proposed by the Commission
(29) In technical specifications and in award criteria, contracting authorities and contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the concession. In order to better integrate social considerations in the award of concessions, procurers may also be allowed to include, in the award criteria, characteristics related to the working conditions. However, where the contracting authorities or contracting entities use the most economically advantageous tender, such criteria may only relate to the working conditions of the

Or. en
persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. In this case, any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. Contracting authorities and contracting entities should, also where they use the criterion of the most economically advantageous tender, be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the concession in question, as this may affect the quality of concession performance and, as a result, the economic value of the tender.

working conditions. However, where the contracting authorities or contracting entities use the most economically advantageous tender, such criteria may only relate to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may for example concern the protection of health of the staff involved in the production process, gender balance (e.g. equal pay, work-life balance), access to vocational training, users’ involvement and consultation, affordability, human rights, ethical trade or the favouring of social integration of disadvantaged persons or members of vulnerable groups (such as long-term unemployed persons, Roma, migrants or younger and older workers) amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. In this case, any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. Contracting authorities and contracting entities may also integrate
into technical specifications or award criteria social considerations relating to external social costs directly linked to the life-cycle, such as the impacts of production on the surrounding environment and adjacent communities. Contracting authorities and contracting entities should lay down in the technical specifications obligations relating to social and employment conditions, health and safety at the workplace, social security and working conditions, as laid down in EU and national laws, regulations or administrative provisions, arbitration rulings, collective agreements and contracts as laid down in international labour law provisions which apply in the place where the work, service or supply is performed; these obligations shall also apply in cross-border situations, where workers from one Member State provide services in another Member State.

Amendment 359
Françoise Castex

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) In technical specifications and in award criteria, contracting authorities and contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the concession. In order to better integrate social considerations in the award of concessions, procurers may also be allowed to include, in the award criteria, characteristics related to the working conditions of the workforce.

Amendment

(29) In technical specifications and in award criteria, contracting authorities and contracting entities should be allowed to refer to a specific production process, a specific mode of provision of services, or a specific process for any other stage of the life cycle of a product or service, provided that they are linked to the subject-matter of the concession. In order to better integrate social considerations in the award of concessions, granting authorities may also be allowed to include, in the award criteria, characteristics related to the working conditions of the workforce.
conditions. However, where the contracting authorities or contracting entities use the most economically advantageous tender, such criteria may only relate to the working conditions of the persons directly participating in the process of production or provision in question. Those characteristics may only concern the protection of health of the staff involved in the production process or the favouring of social integration of disadvantaged persons or members of vulnerable groups amongst the persons assigned to performing the contract, including accessibility for persons with disabilities. In this case, any award criteria which include those characteristics should in any event remain limited to characteristics that have immediate consequences on staff members in their working environment. They should be applied in accordance with Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and in a way that does not discriminate directly or indirectly against economic operators from other Member States or from third countries parties to the Agreement or to Free Trade Agreements to which the Union is party. Contracting authorities and contracting entities should, also where they use the criterion of the most economically advantageous tender, be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to performing the concession in question, as this may affect the quality of concession performance and, as a result, the economic value of the tender.

or. fr
(30) Electronic means of information and communication can greatly simplify the publication of contracts and increase the efficiency and transparency of concession award processes. They should become the standard means of communication and information exchange in concession award procedures. The use of electronic means also leads to time savings. As a result, provision should be made for reducing the minimum periods where electronic means are used, subject, however, to the condition that they are compatible with the specific mode of transmission envisaged at Union level. Moreover, electronic means of information and communication including adequate functionalities can enable contracting authorities and contracting entities to prevent, detect and correct errors that occur during procurement procedures.

(31) Contracting authorities and contracting entities from different Member States may be interested in cooperating and in awarding jointly public concessions in order to take the best benefit of internal market potential in
terms of economies of scale and risk-benefit sharing, notably for innovative projects involving a greater amount of risk than reasonably supportable by a single contracting authority or contracting entity. Therefore new rules on cross-border joint concession award designating the applicable law should be established in order to facilitate setting up cross-border joint public concession award. In addition, contracting authorities and contracting entities from different Member States may set up joint legal bodies established under national or Union law. Specific rules should be established for such form of joint concession award.

Or. en

Amendment 362
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 32

Text proposed by the Commission

(32) The laws, regulations and collective agreements, at both national and European Union level, which are in force in the areas of employment conditions and safety at work should apply during performance of a concession, providing that such rules, and their application, comply with Union law. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a concession, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services lays down the minimum conditions which must be observed by the host country in respect of such posted workers.

Amendment

(32) The laws, regulations and collective agreements, at both national and European Union level, which are in force in the areas of employment conditions and safety at work should apply during performance of a concession. In cross-border situations, where workers from one Member State provide services in another Member State for the purpose of performing a concession, the laws, regulations and collective agreements of the host country apply.
Amendment 363
Philippe Juvin

Proposal for a directive
Recital 33

Text proposed by the Commission

(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union’s financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities and contracting entities should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty or where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same contracting authority or contracting entity.

Amendment

(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union’s financial interests or money laundering. Furthermore, grantors should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty, where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same grantor, or where an economic operator, or its parent company, are established in a third country which, in the award of concession contracts, applies restrictive measures against economic operators established in the European Union, where such measures lead to serious and persistent discrimination against economic operators established in the European Union.

Or. fr

Justification

Application of the reciprocity principle in the context of the procedure for awarding concession contracts. An economic operator taking part in a concession award procedure in an EU Member State may be excluded from the procedure if it is established in a third country which applies measures to keep its market closed to European economic operators as far as the award of concession contracts is concerned.
Amendment 364
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Recital 33

Text proposed by the Commission

(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities and contracting entities should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty or where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same contracting authority or contracting entity.

Amendment

(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests, money laundering and non-payment of taxes or social security contributions. Furthermore, grantors should be given the possibility to exclude candidates or tenderers for violating social, labour or environmental law, for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty or where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same grantor.

Or. en

Amendment 365
Cristian Silviu Buşoi

Proposal for a directive
Recital 33

Text proposed by the Commission

(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests

Amendment

(33) Concessions should not be awarded to economic operators that have participated in a criminal organisation or have been found guilty of corruption, fraud to the detriment of the Union's financial interests
or money laundering. Non-payment of taxes or social security contributions should also be sanctioned by mandatory exclusion at the level of the Union. Furthermore, contracting authorities and contracting entities should be given the possibility to exclude candidates or tenderers for serious violations of Union or national law aimed at the protection of public interests compatible with the Treaty or where the economic operator has shown significant or persistent deficiencies in the performance of a prior concession or concessions of a similar nature with the same contracting authority or contracting entity.

Amendment 366
Philippe Juvin
Proposal for a directive
Recital 34

Text proposed by the Commission

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new award procedure is required in case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as

Amendment

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. Any concession in progress may be modified by means of a supplementary agreement, subject to the provisions of this Directive. A new award procedure is required, however, in the case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at
a material change to the initial concession. ensuring the continuity of the provision of
the service pending the award of a new concession should not normally qualify as
a material change to the initial concession.

Or. fr

**Justification**

*Clarification of Amendment 31 of the Rapporteur regarding the legal framework in which contracts in progress may be modified (compliance with the principles of transparency and non-discrimination).*

**Amendment 367**  
Françoise Castex

**Proposal for a directive**  
Recital 34

**Text proposed by the Commission**

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new award procedure is required in case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. *This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.*

**Amendment**

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. *Any concession in force may be modified by means of a supplementary agreement.* A new award procedure is required, however, in the case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession.

Or. fr
Amendment 368
Cristian Silviu Buşoi, Robert Rochefort, Philippe Juvin

Proposal for a directive
Recital 34

Text proposed by the Commission

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. A new award procedure is required in case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.

Amendment

(34) It is necessary to clarify the conditions under which modifications of a concession during its execution require a new award procedure, taking into account the relevant case-law of the Court of Justice of the European Union. Any concession in force may be modified by means of a supplementary agreement. A new award procedure is required, however, in the case of material changes to the initial concession, demonstrating the intention of the parties to renegotiate essential terms or conditions of that concession. This is notably the case if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure. An exceptional and temporary extension of the term of the concession strictly aimed at ensuring the continuity of the provision of the service pending the award of a new concession should not normally qualify as a material change to the initial concession.

Nevertheless, where a contract has reached its term the grantor and the concessionaire shall refrain from extensions for purposes of investments not essential to the performance of the concession and which would be implemented solely with a view to extending the duration thereof.

Or. fr

Justification

Bringing the text into line with the amendment to Article 42.
Amendment 369
Cristian Silviu Buşoi

Proposal for a directive
Recital 34 a (new)

Text proposed by the Commission

(34a) As concessions are often long-term contracts, in order to determine their value the relevant quantitative data need to be updated whenever the value of a concession is assessed. In this way the legal approach can be made consistent with the economic and financial reality of the concession contract.

Amendment

Or. fr

Justification

Consistency with amendments to articles.

Amendment 370
Françoise Castex

Proposal for a directive
Recital 35

Text proposed by the Commission

(35) Contracting authorities and contracting entities can be faced with external circumstances that they could not foresee when they awarded the concession. In this case, a certain degree of flexibility is needed to adapt the concession to these circumstances without a new award procedure. The notion of circumstances that a diligent contracting authority or contracting entity could not foresee refers to those circumstances which could not be predicted despite reasonably diligent preparation of the initial award by the contracting authority or contracting entity, taking into account its available

Amendment

(35) Grantors can be faced with external circumstances that they could not foresee when they awarded the concession. In this case, a certain degree of flexibility is needed to adapt the concession to these circumstances without a new award procedure.
means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value. However, this cannot apply in cases where a modification results in an alteration of the nature of the overall procurement, for instance by replacing the works, supplies or services to be procured by something different or by fundamentally changing the type of procurement since, in such a situation, a hypothetical influence on the outcome may be assumed.

Amendment 371
Heide Rühle

Proposal for a directive
Recital 36

Text proposed by the Commission

(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions or insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not automatically require new award procedures for all concessions performed by that undertaking.

Amendment

(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, such as purely internal reorganisations, mergers and acquisitions or insolvency or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not require new award procedures for all concessions performed by that undertaking.
Amendment 372
Françoise Castex

Proposal for a directive
Recital 36

_**Text proposed by the Commission**_

(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession, *such as purely internal reorganisations, mergers and acquisitions or insolvency* or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not automatically require new award procedures for all concessions performed by that undertaking.

_**Amendment**_

(36) In line with the principles of equal treatment and transparency, the successful tenderer should not be replaced by another economic operator without reopening the concession to competition. However, the successful tenderer performing the concession may undergo certain structural changes during the performance of the concession or be substituted on the basis of a contractual clause known to all tenderers and in line with the principles of equal treatment and transparency. Such structural changes should not automatically require new award procedures for all concessions performed by that undertaking.

Or. fr

Amendment 373
Lara Comi

Proposal for a directive
Recital 37 a (new)

_**Text proposed by the Commission**_

(37a) In keeping with the case law of the Court of Justice of the European Union, this Directive should apply to concessions awarded after its entry into force.

_**Amendment**_

(37a) In keeping with the case law of the Court of Justice of the European Union, this Directive should apply to concessions awarded after its entry into force.

Or. it
Amendment 374  
Malcolm Harbour, Edvard Kožušník  
Proposal for a directive  
Recital 38

**Text proposed by the Commission**

(38) In order to adapt to rapid technical and economic developments, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication to ensure the interoperability of technical formats, processes and messaging in concession award procedures conducted using electronic means of communication taking into account technological developments and administrative needs. Furthermore, the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to-date.

**Amendment**

(38) In order to adapt to rapid technical and economic developments, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of a number of non-essential elements of this Directive. In fact, the technical details and characteristics of the devices for electronic receipt should be kept up to date with technological developments and administrative needs; it is also necessary to empower the Commission to make mandatory technical standards for electronic communication, such as the submission of three-dimensional digital representations when tendering for a works concession, to ensure the interoperability of technical formats, processes and messaging in concession award procedures conducted using electronic means of communication taking into account technological developments and administrative needs. Furthermore, the list of legislative acts of the Union establishing common methodologies for the calculation of life-cycle costs should be quickly adapted to incorporate the measures adopted on a sectoral basis. In order to satisfy these needs, the Commission should be empowered to keep the list of legislative acts including LCC methodologies up-to-date.

**Or. en**

**Justification**

*Digital three-dimensional representations are essential tools enabling contracting authorities to improve the decision-making through the design, execution and the operation of public works concessions. Several Member States already require tenderers to submit interoperable*
three-dimensional digital representations.

Amendment 375
Heide Rühle

Proposal for a directive
Recital 39

Text proposed by the Commission

(39) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of this Directive and of the Treaty principles, Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Council Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.

Or. en

Amendment 376
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Recital 39
(39) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of this Directive and of the Treaty principles, Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Council Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.

*Justification*

Application of the Remedies Directives 89/665/EEC and 92/13/EC would not be proportionate for contracts as complex as concessions. The guidelines for the Member States should be based on the case-law of the Court of Justice, which, in its judgment in case C-324/98, obliged the Member States only to allow the impartiality of procurement procedures to be reviewed.

Amendment 377
Werner Kuhn
Proposal for a directive
Recital 39
(39) In order to ensure adequate judicial protection of candidates and tenderers in the concession award procedures, as well as to make effective the enforcement of the rules of this Directive and of the Treaty principles, Council Directive 89/665/EEC on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts and Council Directive 92/13/EEC coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors should also apply to services concessions and to works concessions awarded by both contracting authorities and contracting entities. Directives 89/665/EEC and 92/13/EEC should, therefore, be amended accordingly.

Or. de

Amendment 378
Heide Rühle

Proposal for a directive
Recital 41

(41) The law of the Union on public procurement requires Member States to consistently and systematically monitor the implementation and functioning of those rules in order to ensure the efficient and uniform application of Union law. Hence, where Member States designate a single national authority in charge of monitoring, implementation and control
of public procurement, that authority may have the same responsibilities regarding concessions. A single body with overarching tasks should ensure an overview of main difficulties in implementation and suggest appropriate remedies to more structural problems. That body may also provide immediate feedback on the functioning of policy and potential weaknesses in national legislation and practice, thus contributing to the quick identification of solutions and the improvement of concession award procedures.

Amendment 379
Françoise Castex

Proposal for a directive
Recital 44 a (new)

Text proposed by the Commission

(44a) This Directive is without prejudice to the Member States’ power to award, define and organise the provision of a public service task in accordance with Protocol 29 annexed to the Treaties on the system of public broadcasting in the Member States.

Amendment 380
Heide Rühle

Proposal for a directive
Rule 1

Text proposed by the Commission

1. This Directive establishes rules on the procedures for procurement by contracting

Amendment

1. This Directive establishes rules on the procedures for procurement by contracting
authorities and by contracting entities with respect to concessions whose value is estimated to be not less than the thresholds laid down in Article 5.

2. This Directive applies to the acquisition of works or services, including supplies which are incidental to the subject matter of a concession, from economic operators chosen by either of the following:

a) Contracting authorities whether or not the works or services including the related supplies, are intended for a public purpose;

b) Contracting entities provided that the works or services including the related supplies, are intended for the pursuit of one of the activities referred to in Annex III.

Amendment 381
Liisa Jaakonsaari

Proposal for a directive
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

1a. This Directive recognises the principle of free administration by contracting authorities and contracting entities in conformity with the Treaties. The latter will be free to decide how best to provide, organise and manage the execution of the work and the provision of the services for which they are responsible, in accordance with the legislative arrangements and the methods which they judge to be the most effective manner to ensure a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services.
Proposal for a directive
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

1a. This Directive is without prejudice to the right of public authorities at all levels to decide whether, how and to what extent they want to perform public functions themselves. Public authorities may perform public interest tasks using their own resources, without being obliged to call on external economic operators. They may do so in cooperation with other public authorities.

Proposal for a directive
Article 1 – paragraph 1 b (new)

Text proposed by the Commission

1b. The details of concession contracts, including regarding the transfer of operating risk and eventual payments from the grantor to the economic operator, shall be made public and open to scrutiny.

Any subsequent modifications to the contract shall also be made public.

Member states shall ensure that periodic evaluation of the performance of concessions shall be made public.

Member states shall ensure that for public service concession contracts the same
requirements for transparency and public control apply as for publically-delivered services.

Or. en

Amendment 384
Herbert Dorfmann

Proposal for a directive
Article 1 – paragraph 2 – point a

Text proposed by the Commission

a) Contracting authorities, whether or not the works or services, including the related supplies, are intended for a public purpose;

Amendment

a) Contracting authorities;

Justification

The amendment proceeds from the premiss that, given the structure of a concession contract, whereby the operating risk associated with works or a service is transferred to the concessionaire, it is highly unlikely that contracting authorities would enter into concession contracts for works, services, or supplies that were not intended, directly or indirectly, for a public purpose (or to serve the general interest).

Amendment 385
Werner Kuhn

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

2a. This Directive shall not apply where a contracting authority performs its public interest tasks with its own resources or in cooperation with other contracting authorities.

Amendment

2a. This Directive shall not apply where a contracting authority performs its public interest tasks with its own resources or in cooperation with other contracting authorities.

Or. de
Amendment 386
Pier Antonio Panzeri

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

2a. This Directive does not affect the terms and conditions of employment, including environmental, health and safety, social and labour law, rules and standards, defined by Union and national legislation and collective agreements, which apply where the provision of works, services and supplies takes place.

Amendment

Or. en

Amendment 387
Heide Rühle

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

2a. This Directive constitutes the rules for the award of concessions. In consequence both Directives on public procurement and on procurement by entities operating in the water, energy, transport and postal services sectors do not apply to concessions as defined in this Directive.

Amendment

Or. en

Amendment 388
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 1 – paragraph 2 a (new)
Text proposed by the Commission

Amendment

2a. The application of this Directive is subject to Articles 36, 51, 52, 62 and 346 TFEU.

Or. en

Justification

This Amendment is part of a package aiming to ensure there is no overlap between this Directive and the Directive on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security (2009/81/EC), as well as the related relevant Treaty articles.

Amendment 389
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Exclusively the conditions laid down in this Directive shall apply to the procedures followed by contracting authorities or contracting entities as referred to in Article 1(1) when concluding concessions. The provisions of the directive on public procurement and the directive on the procurement procedures of entities operating in the water, energy, transport and postal services sectors shall not apply to concessions referred to in paragraph 1, even in a corresponding form.

Or. de

Justification

The directive on the award of concession contracts should contain conclusive rules. There should be no application derived from the directives on public procurement and on the procurement procedures of entities operating in the water, energy, transport and postal services sectors.
Amendment 390
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive shall not apply where a contracting authority performs its public interest tasks with its own resources or in cooperation with other contracting authorities.

Or. de

Justification

The wording is taken from the case-law of the Court of Justice in cases C-324/07 (Coditel Brabant, paragraphs 48 and 49) and C-480/06 (Stadt Reinigung Hamburg, paragraph 45).

Amendment 391
Mikael Gustafsson, Cornelis de Jong

Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. This Directive shall not affect the right of public authorities at any level to decide whether they shall perform public works or services themselves, by using their own internal resources without being obliged to award concessions to external economic operators. These tasks may be performed in cooperation with other public contracting authorities.

Or. en

Amendment 392
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

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Proposal for a directive
Article 1 – paragraph 2 a (new)

Text proposed by the Commission

2a. This Directive does not apply to acts or contracts through which the State or a public authority or entity awards an economic operator establishing the right to exploit certain public domains or resources when either the State or public authority or entity establishes:

a) general conditions for the exercise of an economic activity without becoming a beneficiary of the specific works or services provided by the economic operator, or

b) terms and conditions to exploit certain public domains or resources, such as land lease contracts. To this end, it is immaterial that, in exploiting public land or domain, works may be carried out for the improvement or infrastructuring of such public land or domain, as long as the economic activity carried out by the operator maintains a prevailing nature on the execution of these works.

Or. en

Justification

Recital 6 of the proposed directive excludes from its scope of application those contracts entered between State or public authorities and undertakings that merely allow the latter to carry out an economic activity under certain regulated requirements or allow them to use public land or domain. This is typical in many European ports, where the State owns the land and infrastructures used by port operators, and as in the case of public maritime concessions for tourist and recreational purpose.

Amendment 393
Lara Comi

Proposal for a directive
Article 1 – paragraph 2 a (new)
2a. This Directive shall apply to concessions awarded after its entry into force.

Proposal for a directive
Article 1 - paragraph 2 a (new)

2a. This Directive shall not affect:

(a) labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which is in conformity with Community law. Equally, this Directive shall not affect the social security legislation of the Member States;

(b) the exercise of fundamental rights recognised in the Member States and by Community legislation. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Community law;

(c) the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.
Amendment 395
Heide Rühle

Proposal for a directive
Article 1 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. This Directive does not apply to nor indirectly affect services of general economic interest, as defined by the Member States. The provisions of this directive shall in all cases preserve the role of services of general economic interest, in particular in promoting social and territorial cohesion.

Or. en

Justification

In accordance with article 14 and protocol 26 TFEU, it is essential to preserve completely the missions of general interest, including the legal status of providers (public or private), their funding, their obligations and their organisation. Services of general (economic) interest should be completely excluded and not affected in any way by this Directive.

Amendment 396
Sirpa Pietikäinen

Proposal for a directive
Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a

Principle of free administration by public authorities

This Directive recognises the principle of free administration by contracting authorities and contracting entities in conformity with the Treaties. The latter will be free to decide how best to provide,
organise and manage the execution of the work and the provision of the services for which they are responsible, in accordance with the legislative arrangements and the methods which they judge to be the most effective manner to ensure a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services.

Amendment 397
Othmar Karas

Proposal for a directive
Article 1 a (new)

Text proposed by the Commission

Amendment

Article 1a
Principle of free administration by public authorities

This Directive recognises the principle of free administration by contracting authorities and contracting entities in accordance with the subsidiarity principle enshrined in Union law and the national legislation in force. They shall be free to decide on the management method they wish to select in order to execute works or provide services, or whether they will have works executed or services provided within the meaning of this Directive directly or by external providers, in accordance with the legal arrangements in the corresponding Member States.

Justification

To underline that the directive does not interfere with the principle of administrative freedom for public authorities and does not lay down any rules for the Member States or their
authorities on whether a service should be provided by the state or by external providers. This principle applies in particular to sensitive areas relating to the provision of services of general interest or of general economic interest.

Amendment 398
Pier Antonio Panzeri

Proposal for a directive
Article 1 a (new)

<table>
<thead>
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<tr>
<td><strong>Article 1 a</strong></td>
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<tr>
<td><strong>Principle of free administration by public authorities</strong></td>
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<tr>
<td>1. This Directive recognises the principle of free administration by contracting authorities and contracting entities in conformity with the EU Treaties. The latter will be free to decide how best to provide, organise and manage the execution of the work and the provision of the services for which they are responsible, in accordance with the legislative arrangements and the methods which they judge to be the most effective manner to ensure a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services.</td>
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<tr>
<td>2. This Directive does not affect the freedom of Member States to define, in conformity with the Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.</td>
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Or. en

Amendment 399
Françoise Castex
Proposal for a directive
Article 1a (new)

Text proposed by the Commission

Principle of free administration by public authorities

This Directive recognises the principle of free administration by contracting authorities and contracting entities in conformity with the national legislation in force. They shall be free to decide on the management method they deem to be the most appropriate in order to execute the works and provide the services for which they are responsible, in accordance with the legal and procedural arrangements they deem to be the most effective.

Pursuant to Article 14 of the Treaty on the Functioning of the European Union, and Protocol 26 to that Treaty, this Directive shall have neither the objective nor the effect of laying down a specific legal form for the public authorities concerned.

Amendment

Article 1a

Or. fr

Amendment 400
Sirpa Pietikäinen

Proposal for a directive
Article 1b (new)

Text proposed by the Commission

Principles of transparency by public authorities

The details of concession contracts, including regarding the transfer of operating risk and eventual payments from the grantor to the economic
operator, shall be made public and open to scrutiny.

Any subsequent modifications to the contract shall also be made public.

Member States shall ensure that periodic evaluation of the performance of concessions shall be made public.

Member States shall ensure that for public service concession contracts the same requirements for transparency and public control apply as for publically-delivered services.

Amendment 401
Pier Antonio Panzeri

Proposal for a directive
Article 1 b (new)

Text proposed by the Commission

Amendment

Article 1 b

Principles of transparency by public authorities

The details of concession contracts, including regarding the transfer of operating risk and eventual payments from the grantor to the economic operator, shall be made public and open to scrutiny.

Any subsequent modifications to the contract shall also be made public.

Member States shall ensure that periodic evaluation of the performance of concessions shall be made public.

Or. en

Amendment 402
Heide Rühle
Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) a ‘public works concession’ means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

Amendment

(2) ‘works concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or entities entrusts the execution of works to one or more economic operators, where the consideration for this delegation consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

Amendment 403
Philippe Juvin

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) a 'public works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

Amendment

(2) (a) a 'works concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or entities awards the execution of works to one or more economic operators, where the consideration for that award consists either solely in the right to exploit the
service that is the subject of the contract or in that right together with payment;
The right to exploit the works or services referred to in points (a) and (b) of this paragraph shall imply the transfer to the concessionaire of the substantial economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market. The concessionaire shall be deemed to assume the substantial operating risk where, under normal conditions of exploitation, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject of the concession.

Justification

Clarification of Amendment 44 of the Rapporteur: works concessions and services concessions do not necessarily imply the existence of a responsibility on the part of the original contracting authority or entity (e.g. construction and management of a car park).
Clarification that the definition of the ‘right to exploit the works or services’ is applicable to both works concessions and services concessions, not only to services concessions.

Amendment 404
Liisa Jaakonsaari

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission
(2) a ‘public works concession’ means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right

Amendment
(2) (a) a "work concession" means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrusts the execution of work to one or more economic operators, where the consideration for this delegation consists either solely in the right to exploit the works that are the subject of the contract or in that right together with
together with payment.

(b) a 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrusts the operation of a service for which they are responsible to one or more economic operators, where the consideration for this delegation consists either solely in the right to exploit the service which is the subject of the contract or in that right together with payment.

The right to exploit the works or services shall imply the transfer to the concessionaire of the substantial economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market and encompassing both demand and availability risk. The concessionaire shall be deemed to assume the substantial operating risk where, under normal conditions of exploitation and according to the provisions of the contract, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Or. en

Amendment 405
Bernadette Vergnaud

Proposal for a directive
Article 2 – paragraph 1 – point 2

Text proposed by the Commission

(2) a 'public works concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, where the consideration for the works to be

Amendment

(2) (a) a 'works concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or entities award the execution of works for which they are responsible to one or more economic operators, where the consideration for that
carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

award consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;

Justification

Text adapted to concessions context.

Amendment 406
Bernadette Vergnaud

Proposal for a directive
Article 2 – paragraph 1 – point 2 – point b (new)

Text proposed by the Commission

Amendment

(b) a 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or entities award the performance of services for which they are responsible to one or more economic operators, where the consideration for that award consists either solely in the right to perform the services that are the subject of the contract or in that right together with payment.

The right to exploit the works or services shall imply the transfer to the concessionaire of a significant part of the economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market, whether those risks are linked to supply or demand. The concessionaire shall be deemed to assume the substantial operating risk where, under normal conditions of exploitation, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject of the concession.
Drafting amendment and introduction of the notion of transfer of a ‘significant part’ of the risk, which is more generally understood than ‘the substantial risk’.

Amendment 407
Pier Antonio Panzeri

Proposal for a directive
Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission

(2a) (a) a ‘works concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrusts the execution of works to one or more economic operators, where the consideration for this delegation consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment.

(b) a ‘services concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrusts the operation of a service for which they are responsible to one or more economic operators, where the consideration for this delegation consists either solely in the right to exploit the service which is the subject of the contract or in that right together with payment.

The right to exploit the works or services shall imply the transfer to the concessionaire of the substantial economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market and encompassing both demand and availability risk. The concessionaire shall be deemed to assume the substantial
operating risk where, under normal conditions of exploitation and according to the provisions of the contract, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Amendment 408
Sirpa Pietikäinen

Proposal for a directive
Article 2 – paragraph 1 – point 2 a (new)

Text proposed by the Commission
(2a) 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrusts the operation of a service for which they are responsible to one or more economic operators, where the consideration for this delegation consists either solely in the right to exploit the service which is the subject of the contract or in that right together with payment.

The right to exploit the works or services shall imply the transfer to the concessionaire of the substantial economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market and encompassing both demand and availability risk. The concessionaire shall be deemed to assume the substantial operating risk where, under normal conditions of exploitation and according to the provisions of the contract, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.
Amendment 409
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘works concession’ means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting entities and having as their object the execution of works, where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;

Amendment

deleted

Amendment 410
Josef Weidenholzer

Proposal for a directive
Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘works concession’ means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting entities and having as their object the execution of works, where the consideration for the works to be carried out consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment;

Amendment

deleted

Or. en
Amendment  411
Josef Weidenholzer

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘execution of works’ means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

Amendment

deleted

Or. en

Amendment  412
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) ‘execution of works’ means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

Amendment

(5) ‘execution of works’ means the execution, or both the design and execution, of works related to one of the activities referred to in Annex I or of a work, or the realisation, by whatever means, of a work corresponding to the requirements specified by the grantor exercising a decisive influence on the type or design of the work.

Or. en

Amendment  413
Pier Antonio Panzeri
Proposal for a directive
Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) ‘services concession’ means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment.

Amendment

deleted

Or. en

Amendment 414
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) ‘services concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrusts the operation of a service for which they are responsible to one or more economic operators, and where the consideration for this delegation consists either solely in the right to exploit the service which is the subject of the contract or in that right together with payment. By contrast, certain State acts such as authorisations, permits or licences, whereby the State or a public authority establishes the conditions for the exercise of an economic activity, having as their object the entitlement to offer social services and/or the right to conclude agreements, by means of which the
grantor grants an economic operator the right to exploit certain public domains or resources, or grants rights of way should not be regarded as concessions insofar as they establish only general conditions for their use without turning the public authority into a recipient of specific works or services provided by the contracting partner.

Or. en

Justification

There is still considerable lack of clarity and thus of legal certainty in the definition of services concessions. In any case, it must be ensured that sovereign activities like licences and permits or court instructions and assignments are excluded from the concept of the concession contract. Permission procedures of member states which are based on the point that all service providers which fulfil certain statutory preconditions are permitted to provide services irrespective of their legal structure should not be deemed a service concession contract. Social services are for example in some Member States carried out by independent providers. These independent providers – and to some extent also the measures themselves – require a permit under social law. This permit should be excluded from the scope of the directive. Under the current wording, this is not clearly the case.

Amendment 415
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment.

Amendment

(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment. Member State procedures based on the principle that all service providers

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EN
services concessions, in so far as they comply with the general principles of equal treatment, transparency and non-discrimination.

Justification

Clarification of the concept of services concession. In the interests of legal certainty, it should be made clear that procedures based on general and non-discriminatory market access and open to all service providers meeting the conditions established beforehand by law are not services concessions, regardless of whether approval is granted in the form of authorisations, licences or agreements.

Amendment 416
Peter Simon

Proposal for a directive
Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment.

Amendment

(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment, except in the case of simple approvals, in particular approvals on the use of a public good or a public domain.

Or. de
Justification

Clarification that simple approvals such as right of way are not covered by the directive.

Amendment 417
Françoise Castex

Proposal for a directive
Article 2 – paragraph 1 – point 7

Text proposed by the Commission

(7) 'services concession' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment.

Amendment

(7) a 'services concession' means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities award the performance of services for which they are responsible to one or more economic operators, where the consideration for that award, constituting the mandating act, consists either solely in the right to perform the service that is the subject of the contract or in that right together with payment. The right to exploit the works or services shall imply the transfer to the concessionaire of the substantial economic risk in exploiting these works or services, defined as the risk of exposure to the vagaries of the market. The concessionaire shall be deemed to assume the substantial operating risk where, under normal conditions of exploitation, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject of the concession.

Or. fr

Amendment 418
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 2 – paragraph 1 – point 7 a (new)
Text proposed by the Commission

(7a) "services concession" means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment; Member State procedures based on the principle that all service providers capable of meeting the conditions established beforehand by law, regardless of their legal form, shall be authorised to provide the service shall not be considered services concessions, in so far as they comply with the general principles of equal treatment, transparency and non-discrimination.

Amendment

Or. de

Justification

The directive should make it clear that all potential service providers have a general entitlement to authorisation to provide a service, and that this does not fall with the scope of the directive.

Amendment 419
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 2 – paragraph 1 – point 7 b (new)

Text proposed by the Commission

(7b) "services concession" means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting
authorities or contracting entities and having as their object the provision of services other than those referred to in points 2 and 4 where the consideration for the services to be provided consists either solely in the right to exploit the services that are subject of the contract or in that right together with payment; approvals or the simple approval for the use of a public good or public domain are not services concessions within the meaning of this Directive.

Justification

Clarification that the scope of the directive does not cover certain areas such as rights of way, which simply concern public authorisations and do not constitute a public procurement arrangement.

Amendment 420
Pier Antonio Panzeri

Proposal for a directive
Article 2 – paragraph 1 – point 10

Text proposed by the Commission

(10) “economic operator” means any natural or legal person, or public entity, or a group of such persons and/or entities which offers the execution of works and/or a work, supplies or services on the market.

Amendment

(10) “economic operator” means any natural or legal person, or public entity, or a group of such persons and/or entities, including consortia of undertakings, which offers the execution of works and/or a work, supplies or services on the market.

Amendment 421
Malcolm Harbour, Edvard Kožušnik

Proposal for a directive
Article 2 – paragraph 1 – point 12
(12) ‘electronic means’ means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means.

(12) 'electronic means’ means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

in the case of a works concession, 'electronic means' shall also refer to the use of interoperable three-dimensional representations covering the design, execution and the operation of the building or infrastructure;

Or. en

Justification

This is an essential tool enabling contracting authorities to improve the decision-making process value for money and efficiency. This measure will save taxpayers money by ensuring that alternative designs are evaluated with comparative ease, and in particular, that energy and other lifecycle savings are properly costed and compared.

Amendment 422
Heide Rühle

Proposal for a directive
Article 2 – paragraph 1 – point 13

(13) ‘concession documents’ means all documents produced or referred to by the contracting authority or contracting entity to describe or determine elements of the procurement or the procedure, including the contract notice, the technical specifications, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

(13) ’concession documents’ means all documents produced or referred to by the contracting authority or contracting entity to describe or determine elements of the concession contract.

Or. en
Amendment 423
Marc Tarabella

Proposal for a directive
Article 2 – paragraph 1 – point 13 a (new)

Text proposed by the Commission
(13a) ‘socially sustainable production process’ means that the concession contract is performed in accordance with the laws, rules and standards governing health and safety and with social and employment law, in particular with regard to equal treatment in the workplace. The principle of equal treatment in the workplace refers to compliance with the relevant conditions of employment, including the laws, rules and standards governing health and safety and social and employment law, as laid down in Union and national legislation and in the collective agreements applying in the place where the works, services or supplies are provided;

Or. fr

Amendment 424
Pier Antonio Panzeri

Proposal for a directive
Article 2 – paragraph 1 – point 14

Text proposed by the Commission
(14) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

Amendment
(14) ‘Life cycle characteristics' relates to any part of the life cycle of a product or works or the provision of a service. Life cycle characteristics are embedded in a product as a result of choices made in the production process or other non-use phases of the life cycle of the product, even if such characteristics are not apparent in the physical or functional
qualities of the resulting work or service. Life cycle characteristics relating to production processes shall encompass the respect of environmental, health and safety, social and labour law requirements as defined by international, European Union and national legislation and, where applicable, collective agreements applying in the place where the work or service is carried out.

Amendment 425
Anja Weisgerber, Sabine Verheyen

Proposal for a directive
Article 2 – paragraph 1 – point 14

Text proposed by the Commission

(14) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

Amendment

(14) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal and clearance.

Justification

The notion of 'finalisation' is unclear. It should therefore be deleted.

Amendment 426
Marc Tarabella

Proposal for a directive
Article 2 – paragraph 1 – point 14
(14) ‘life cycle’ means all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation.

(14) ‘life cycle’ and ‘socially sustainable production process’ should determine the most economically advantageous tender by taking into account the social and environmental aspects resulting from all consecutive and/or interlinked stages, including production, transport, use and maintenance, throughout the existence of a product or a works or the provision of a service, from raw material acquisition or generation of resources to disposal, clearance and finalisation. Contracting authorities and entities may also use the technical specifications or award criteria to minimise the harmful social or environmental impact and maximise the positive social or environmental impact with a view to achieving the most cost-effective outcome.

Proposal for a directive
Article 2 – paragraph 1 – point 14 a (new)

(14a) 'pecuniary interest' exists if mutually binding obligations, where the execution of these works or services are subject to specific requirements defined by the contracting authority or entity, are legally enforceable.
Proposal for a directive
Article 2 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Amendment

The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall require the transfer to the concessionaire of substantial operating risk. The concessionaire shall be deemed to assume substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. Where the concession is in a sector of activity subject to rules or regulation which limit the financial risk involved in the

Amendment 429
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 2 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Amendment

The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall require the transfer to the concessionaire of substantial operating risk. The concessionaire shall be deemed to assume substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. Where the concession is in a sector of activity subject to rules or regulation which limit the financial risk involved in the
operation of the concession, the concessionaire shall nevertheless be deemed to assume the substantial operating risk where the concessionaire assumes all, or at least a significant share, of the operating risk faced by the contracting authority or entity even if that risk is, from the outset, very limited on account of the detailed rules of public law governing that service.

Justification

The definition of substantial risk transfer should explicitly reflect CJEU case-law (C-206/08 and C-274-09) that a concession may arise even if the amount of actual risk transferred is limited by operation of law.

Amendment 430
Peter Simon

Proposal for a directive
Article 2 – paragraph 2 – subparagraph 1

Text proposed by the Commission

The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Amendment

The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession; an operating risk which is limited from the outset shall have no effect on this principle.

Or. de
Justification

Clarification in view of the case-law of the ECJ in case WAZV Gotha (C-206/08), according to which concessions may also exist where the risk taken by the operator is limited from the outset on account of the rules of public law.

Amendment 431
Małgorzata Handzlik, Róża Gräfin von Thun und Hohenstein, Rafał Trzaskowski

Proposal for a directive
Article 2 – paragraph 2 – subparagraph 1

Text proposed by the Commission
The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Amendment
The award of a concession shall imply the transfer to the concessionaire of the substantial operating risk. The concessionaire shall be deemed to assume the substantial operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession.

Or. pl

Justification

This change is proposed because the ‘right to exploit’ is only the form of consideration in the case of a concession.

Amendment 432
Heide Rühle

Proposal for a directive
Article 2 – paragraph 2 – subparagraph 2

Text proposed by the Commission
That economic risk may consist in either of the following:
(a) the risk related to the use of the works
or the demand for the provision of the

Amendment
deleted

(b) the demand for the provision of the
service; or

(b) the risk related to the availability of
the infrastructure provided by the
concessionaire or used for the provision
of services to users.

Or. en

Amendment 433
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 2 – paragraph 2 – subparagraph 2

Text proposed by the Commission

That economic risk may consist in either of the following:

a) the risk related to the use of the works or the demand for the provision of the service; or

b) the risk related to the availability of the infrastructure provided by the concessionaire or used for the provision of services to users.

Or. de

Justification

The concept of 'economic risk' should be replaced by operating risk to ensure consistency. This is defined more precisely in recital 8a (new).

Amendment 434
Riikka Manner

Proposal for a directive
Article 2 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

That economic risk may consist in either of the following:

That operating risk may consist in either of the following:

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### Amendment 435
Lara Comi

**Proposal for a directive**  
**Article 2 – paragraph 2 – subparagraph 2 – point b**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) the risk related to the availability of the infrastructure provided by the concessionaire or used for the provision of services to users.</td>
<td>(b) the risk related to the availability of the infrastructure provided by the concessionaire or used for the provision of services to users, <em>including contracting authorities</em>.</td>
</tr>
</tbody>
</table>

### Amendment 436
Lara Comi

**Proposal for a directive**  
**Article 2 – paragraph 2 – subparagraph 2 a (new)**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>The substantial operating risk shall be determined taking into account the Eurostat criteria required in order to establish whether the investment should be entered in the budget of the public authority or of the private operator in such a way as to trigger an excessive deficit procedure.</td>
<td></td>
</tr>
</tbody>
</table>

### Amendment 437
Sabine Verheyen, Birgit Collin-Langen, Anja Weisgerber, Hans-Peter Mayer

**Proposal for a directive**  
**Article 2 – paragraph 2 a (new)**
2a. The right to exploit the works or services as referred to in points 2, 4 and 7 of the first paragraph shall imply the transfer to the concessionaire of the operating risk. The concessionaire shall be deemed to assume the operating risk where it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. This shall also apply where the operating risk is limited from the outset.

Or. de

Justification

In keeping with the case-law of the ECJ in case WAZV Gotha (C-206/08), contracting authorities must be able to have services provided through a concession. This also applies where the risk associated with use is limited on account of the rules governing the sector. This also applies to markets where the risk taken by the operator is limited from the outset on account of the rules of public law.

Amendment 438
Heide Rühle

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Rights which have been granted by means of a procedure in which adequate publicity has been ensured and where the granting of those rights was based on objective criteria shall not constitute ‘special or exclusive rights’ within the meaning of this Directive. Such procedure includes:

(a) procurement procedures with a prior call for competition in conformity with Directive [2004/18/EC or 2004/17/EC] or this Directive
(b) procedures pursuant to other legislative acts of the Union, listed in Annex XI, ensuring adequate prior transparency for granting authorisations on the basis of objective criteria.

Amendment 439
Herbert Dorfmann

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 2 – point b a (new)

Text proposed by the Commission

(ba) procedures pursuant to legislative acts of Member States conforming to Treaty principles regarding equal treatment, transparency, proportionality, and mutual recognition.

Amendment

(Or. en)

Amendment 440
Heide Rühle

Proposal for a directive
Article 4 – paragraph 3 – subparagraph 3

Text proposed by the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 46 to modify the list of the Union legislative acts set out in Annex XI where, due to the adoption of new Union legislation or repeal of Union legislation, such modification proves necessary.

Amendment

deleted

Or. en
Amendment 441  
Heide Rühle  
Proposal for a directive  
Rule 5  

Text proposed by the Commission  

Rule 5  
deleted  

Thresholds  
1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:  
(a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III;  
(b) concessions concluded by contracting authorities.  
2. Services concessions the value of which is equal to or greater than EUR 2 500 000 but lower than EUR 5 000 000 other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28.  

Or. en  

Amendment 442  
Malcolm Harbour, Edvard Kožušník  
Proposal for a directive  
Article 5 – paragraph 1 – introductory part  

Text proposed by the Commission  

1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:  

Amendment  
1. This Directive shall apply to the following concessions the value of which is equal to or greater than:  

Or. en
Amendment 443
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:

Amendment

1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 10 000 000:

Or. de

Justification

The threshold must be sufficient to ensure that the administrative burden is proportionate, in view of the lengthy period covered by concessions. A threshold of only 5 million would involve a significant administrative burden for small contractors in particular.

Amendment 444
Françoise Castex

Proposal for a directive
Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 5 000 000:

Amendment

1. This Directive shall apply to the following concessions the value of which is equal to or greater than EUR 10 000 000:

Or. fr

Amendment 445
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) concessions concluded by contracting entities for the pursuit of one of the

Amendment

(a) EUR 5 000 000 where the duration of the concession does not exceed five years
activities referred to in Annex III;

Amendment 446
Anja Weisgerber, Birgit Collin-Langen, Sabine Verheyen, Hans-Peter Mayer

Proposal for a directive
Article 5 – paragraph 1 – point a

Text proposed by the Commission

a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III;

Amendment

a) concessions concluded by contracting entities for the pursuit of one of the activities referred to in Annex III and relating to a network or geographically restricted area with at least 100 000 connected customers, or with at least 100 000 inhabitants;

Or. de

Justification

Adapted to the figures given in Article 26(4) of Directive 96/92/EC concerning common rules for the internal market in electricity.

Amendment 447
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) concessions concluded by contracting authorities.

Amendment

(b) EUR 1 000 000 multiplied by the maximum duration of the concession in calendar years, where the intended duration, not including any permitted extension, exceeds five years. Where the intended duration is not a round number of years, the duration shall be rounded down to the nearest complete calendar month and the threshold rounded down to
the nearest EUR 80 000.

The intended duration for the calculation of the threshold shall be that set out in the concession notice, or where a call is not foreseen, the duration estimated at the moment the contracting authority or entity commences the concession award procedure, for instance by contacting economic operators in relation to the procurement.

Or. en

Justification

This is to address concerns that a EUR 5 Million threshold may be too low for long term contracts and introduces a reasonable rolling threshold mechanism for longer periods. There will also be a need to calculate national currency equivalent for those States not in the Euro: this can probably be copied across from main directive (or Art 78 of current public procurement directive) and is a technical amend that can probably be dealt with through the lawyer linguists.

Amendment 448
Malcolm Harbour, Edvard Kožušník

Proposal for a directive
Article 5 – paragraph 1 a (new)

Text proposed by the Commission

1a. The Commission shall review the thresholds established in paragraph 1, points (a) and (b), every two years from the entry into force of this Directive and if necessary revise them in accordance with the procedure laid down in this Directive.

The thresholds shall be increased by the compound average annual inflation rate as measured by the Harmonised Index of Consumer Prices for the European Union defined in Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices, and published by Eurostat, using the most recently published index prior to the date
of the review under this Article. The value of the thresholds thus revised, shall where necessary, be rounded down to the nearest EUR 100 000.

Justification

Appropriate reference to established threshold review procedures was missing from the Commission's proposal.

Amendment 449
Malcolm Harbour, Edvard Kožušnik

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission
2. Services concessions the value of which is equal to or greater than EUR 2 500 000 but lower than EUR 5 000 000 other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28.

Amendment
2. Services concessions the value of which is equal to or greater than EUR 5 000 000

Justification
Deletion of the intermediary threshold, in line with the Rapporteur's position.

Amendment 450
Françoise Castex

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission
2. Services concessions the value of which is equal to or greater than EUR 2 500 000

Amendment
2. Services concessions the value of which is equal to or greater than EUR 5 000 000
but lower than **EUR 5 000 000** other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28.

but lower than **EUR 10 000 000** other than social services and other specific services shall be subject to the obligation to publish a concession award notice in accordance with Articles 27 and 28.

**Amendment 451**  
Heide Rühle

Proposal for a directive  
Article 6 – title

*Text proposed by the Commission*  
Methods for calculating the estimated value of concessions

*Amendment*  
*Thresholds and* methods for calculating the estimated value of concessions

**Amendment 452**  
Heide Rühle

Proposal for a directive  
Article 6 – paragraph 1

*Text proposed by the Commission*  
1. The calculation of the estimated value of a concession shall be based on the total amount payable, net of VAT, as estimated by the contracting authority or the contracting entity, including any form of option and any extension of the duration of the concession.

*Amendment*  
deleted

**Amendment 453**  
Josef Weidenholzer
Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. The calculation of the estimated value of a concession shall be based on the total amount payable, net of VAT, as estimated by the contracting authority or the contracting entity, including any form of option and any extension of the duration of the concession.

Amendment

1. The calculation of the estimated value of a concession shall be based on its aggregate turnover net of tax, over the duration of the contract, as estimated by

Amendment 454
Andreas Schwab, Anja Weisgerber

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. The calculation of the estimated value of a concession shall be based on the total amount payable, net of VAT, as estimated by the contracting authority or the contracting entity, including any form of option and any extension of the duration of the concession.

Amendment

1. The value of a concession shall be equal to the estimated turnover of the concessionaire, net of value added tax, taking account of work and services, including supplies, carried out in the course of executing the concession.

Amendment 455
Philippe Juvin

Proposal for a directive
Article 6 – paragraph 1

Text proposed by the Commission

1. The calculation of the estimated value of a concession shall be based on the total amount payable, net of VAT, as estimated by the contracting authority or the
contracting entity, including any form of option and any extension of the duration of the concession.

the grantor, to which shall be added any public investment subsidies received by the concessionaire.

This estimate shall be valid at the moment the concession notice is sent or, in cases where such notice is not provided for, at the moment the grantor commences the concession award procedure.

Where the value is modified following negotiations during the award procedure, the valid estimate shall be that indicated when the contract is signed.

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**Justification**

The calculation of the turnover does not currently include public investment subsidies (whereas operating subsidies are included). However, for certain concessions the public investment subsidies can be very sizeable. In order to avoid distorting the calculation of the value of the concession, the calculation should therefore include both the turnover and the public investment subsidies.

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**Amendment 456**

Heide Rühle

Proposal for a directive

Article 6 – paragraph 1 a (new)

**Text proposed by the Commission**

1a. This Directive shall apply to the concessions the value of which is equal to or greater than EUR 8 000 000

**Amendment**

**Or. en**

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**Amendment 457**

Heide Rühle

Proposal for a directive

Article 6 – paragraph 2

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**EN**
2. The estimated value of a concession shall be calculated as the value of an entirety of works or services, even if purchased through different contracts, where the contracts are part of one single project. Indications for the existence of one single project consist in overall prior planning and conception by the contracting authority or contracting entity, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.

Where the contracting authority or the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the concession.

Amendment 458
Andreas Schwab, Anja Weisgerber, Hans-Peter Mayer

Proposal for a directive
Article 6 – paragraph 2

2. The estimated value of a concession shall be calculated as the value of an entirety of works or services, even if purchased through different contracts, where the contracts are part of one single project. Indications for the existence of one single project consist in overall prior planning and conception by the contracting authority or contracting entity, the fact that the different elements purchased fulfil a single economic and technical function or that they are otherwise logically interlinked.
Where the contracting authority or the contracting entity provides for prizes or payments to candidates or tenderers it shall take them into account when calculating the estimated value of the concession.

Justification

This amendment seeks to simplify the rules on the award of concession contracts. Furthermore, lumping contracts together leads to problems and the concept of 'single project' should be deleted (see the amendment deleting recital 10).

Amendment 459
Heide Rühle

Proposal for a directive
Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. For the purposes of assessing the threshold, the estimated value of the concession shall be equal to the cumulative estimated revenue, excluding tax, over the time of the contract. The method for calculating the estimated value of a concession shall be specified in the concession documents.

Amendment 460
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. The choice of the method used to calculate the estimated value of a

deleted
concession shall not be made with the intention of excluding it from the scope of this Directive. A works project or an entirety of services shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.

Justification

This amendment seeks to simplify the rules on the award of concession contracts.

Amendment 461
Heide Rührle

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of this Directive. A works project or an entirety of services shall not be subdivided with the effect of preventing it from falling within the scope of this Directive, unless justified by objective reasons.

Amendment

3. The choice of the method used to calculate the estimated value of a concession shall not be made with the intention of excluding it from the scope of this Directive.

Or. en

Amendment 462
Heide Rührle

Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. This estimate shall be valid at the moment at which the concession notice is deleted

Amendment

4. This estimate shall be valid at the

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sent, or, in cases where such notice is not foreseen, at the moment at which the contracting authority or the contracting entity commences the concession award procedure, in particular by defining the essential characteristics of the intended concession.

Amendment 463
Heide Rühle
Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission Amendment

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.

Amendment 464
Josef Weidenholzer
Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission Amendment

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made
available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.

Amendment 465
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.

Amendment

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total

Justification

This amendment seeks to simplify the rules on the award of concession contracts.

Amendment 466
Paolo Bartolozzi, Lara Comi

Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total

Amendment

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total
estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.

In the case of public-domain concessions for the provision of services to the public, the threshold shall be estimated and calculated on an annual basis.

Or. it

Amendment 467
Erminia Mazzoni, Roberta Angelilli

Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works.

Amendment

5. With regard to public works concessions and works concessions, calculation of the estimated value shall take account of both the cost of the works and the total estimated value of the supplies and services that are made available to the contractor by the contracting authorities or entities provided that they are necessary for executing the works. In the case of public-domain concessions for the provision of services to the public, the threshold shall be estimated and calculated on an annual basis.

Or. it

Amendment 468
Matteo Salvini, Claudio Morganti, Lorenzo Fontana

Proposal for a directive
Article 6 – paragraph 5 a (new)

Text proposed by the Commission

5a. In the case of public-domain

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concessions for the provision of services directly to consumers, the threshold shall be estimated on an annual basis.

Or. it

Justification

Given the distinctive features of some concessions (for instance in the tourism and leisure sector), it is important to stipulate that the applicability threshold for the directive should be estimated on an annual basis and not for the entire duration of a concession.

Amendment 469
Heide Rühle

Proposal for a directive
Article 6 – paragraph 6

Text proposed by the Commission  
Amendment

6. Where a proposed work or purchase of services may result in concessions being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Or. en

Amendment 470
Pier Antonio Panzeri

Proposal for a directive
Article 6 – paragraph 6

Text proposed by the Commission  
Amendment

6. Where a proposed work or purchase of services may result in concessions being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Or. it
Amendment 471
Andreas Schwab, Hans-Peter Mayer

Proposal for a directive
Article 6 – paragraph 6

Text proposed by the Commission

6. Where a proposed work or purchase of services may result in concessions being awarded at the same time in the form of separate lots, account shall be taken of the total estimated value of all such lots.

Amendment

deleted

Or. de

Justification

This amendment seeks to simplify the rules on the award of concession contracts.

Amendment 472
Pier Antonio Panzeri

Proposal for a directive
Article 6 – paragraph 6 a (new)

Text proposed by the Commission

6a. Contracting authorities may decide to award a concession in separate lots, in which case the total estimated value of all such lots shall be taken into account. Where the aggregate value of the lots is equal to or exceeds the threshold laid down in Article 5, this Directive shall apply to the awarding of each lot.

Amendment

Or. it